



**Arizona Administrative Register**

**Notices of Final Rulemaking**

R4-6-801	New Section
R4-6-802	New Section
R4-6-803	New Section
Article 9	New Article
R4-6-901	New Section
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Article 10	New Article
R4-6-1001	New Section
R4-6-1002	New Section
R4-6-1003	New Section

**2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-3253(A)(1)

Implementing statutes: A.R.S. §§ 32-3251(9)(a), 32-3262, 32-3281, 32-3291, 32-3291(2), 32-3292, 32-3293, 32-3293(A)(1)(b), 32-3293(A)(2), 32-3301(A)(1), 32-3301(B)(1), 32-3301(C)(1), 32-3301(C)(2), 32-3311(A)(1)(a), 32-3311(A)(1)(b), 32-3311(A)(2), 32-3311(B), 32-3321, 32-3321(2), 32-3321(A)(1)(ii), 32-3321(A)(1)(a)(iii), 32-3321(A)(1)(a)(iv), 41-1061.

**3. The effective date of the rules:**

November 15, 1996

**4. A list of all previous notices appearing in the Register addressing the final rules:**

**Notice of Rulemaking Docket Opening**

2 A.A.R. 1639, May 3, 1996

**Notice of Proposed Rulemaking**

2 A.A.R. 1740, May 17, 1996

**Corrections to Notices of Rulemaking Docket Opening**

2 A.A.R. 3406, July 19, 1996

**Notice of Supplemental Proposed Rulemaking**

2 A.A.R. 3630, August 23, 1996

**5. The name and address of agency personnel with whom persons may communicate regarding this rule:**

Name: Sonja Bolf, Assistant to the Director

Address: 1400 West Washington, Suite 350  
Phoenix, AZ 85007

Telephone: (602) 542-1896

Fax: (602) 542-1830

**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

In 1989 the Arizona Legislature enacted A.R.S. § 32-3253(A)(1) authorizing the Board of Behavioral Health Examiners to certify behavioral health professionals including Social Workers, Counselors, Marriage and Family Therapists, and Substance Abuse Counselors. The Board of Behavioral Health Examiners was exempt from the rulemaking process until July 13, 1993. The rules, adopted by the Board before July 13, 1993, and revised by this rulemaking are being submitted for codification with the Office of the Secretary of State.

The Board believes that adoption of these rules will benefit both the certified behavioral health professional and the public. They will enable the professional to acknowledge the requirements necessary for certification and ethical practice in Arizona and will protect the public by providing information regarding standards of conduct and guidance when choosing a certified behavioral health professional.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**8. The summary of the economic, small business, and consumer impact:**

The principal impact of these rules will be on members of the Social Work, Counselor, Marriage and Family Therapy, and Substance Abuse Counselor professions. The rules set the requirements for a professional to become certified. Certification is voluntary, thus there is no required cost or economic impact to any individual or business. Although certification is voluntary, some 3rd-party payers and private and public agencies are requiring certification. Certified behavioral health professionals who want to work with these 3rd-party payers or private or public agencies will incur the cost of becoming certified. The majority of the proposed rules have been in effect since the Board was established in 1989. Promulgating these in accordance with the Arizona Administrative Procedures Act should not have an economic impact. The only changes between the current rules and the proposed rules is the elimination of the formal investigative hearing and the addition of time frames for the Board to deny or certify an applicant in accordance with A.R.S. § 41-1072 et. seq. The Board has found that the formal investigative hearing duplicates the formal hearing. Because all professionals have the right to an informal meeting and a formal hearing, the formal investigative hearing is

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redundant and does not further the due process rights of the applicant. Eliminating the formal investigative hearing will reduce the time to process a contested application and therefore, will benefit the applicant and the public.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**  
There was an omission in Article 7: Substance Abuse Counseling and Treatment, R4-6- 701, therefore a Supplemental Notice was filed and published in the August 23, 1996, *Register*. The addition to this Section is consistent with the other professions and was inadvertently omitted. This change will allow a Substance Abuse applicant who is curriculum deficient and determined ineligible for certification to make up the deficiency and submit a request for reassessment in accordance to R4-6-302.
10. **A summary of the principal comments and the agency response to them:**  
No comments were submitted to the agency.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **Was this rule previously adopted as an emergency rule?**  
No.
14. **The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS**

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R4-6-101. Definitions

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R4-6-204. Credentialing Committee Elections  
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R4-6-405. Certified Master Social Worker and Certified Baccalaureate Social Worker Independent Practice Prohibition.

**ARTICLE 5. COUNSELING**

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R4-6-601. Curriculum  
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R4-6-603. Work Experience for Marriage and Family Therapy Certification  
R4-6-604. Professional Supervision for Marriage and Family Therapy Certification  
R4-6-605. Post-degree Programs  
R4-6-606. Certified Associate Marriage and Family Therapist

**ARTICLE 7. SUBSTANCE ABUSE COUNSELING AND TREATMENT**

Section  
R4-6-701. Education and Work Experience  
R4-6-702. Examination  
R4-6-703. Work Experience for the Substance Abuse Counselor Certification  
R4-6-704. Professional Supervision for Substance Abuse Counselor Certification

**ARTICLE 8. CERTIFICATE RENEWAL AND CONTINUING EDUCATION**

Section  
R4-6-801. Renewal of Certification  
R4-6-802. Continuing Education  
R4-6-803. Continuing Education Documentation

**ARTICLE 9. APPEAL OF CERTIFICATION OR RENEWAL INELIGIBILITY**

Section

- R4-6-901. Appeal Process for Certification Ineligibility
- R4-6-902. Appeal Process for Certificate Renewal Ineligibility

**ARTICLE 10. DISCIPLINARY PROCESS FOR UNPROFESSIONAL PRACTICES**

Section

- R4-6-1001. Disciplinary Process for Unprofessional Practices
- R4-6-1002. Summary Suspension
- R4-6-1003. Review or Rehearing of a Board Decision

**ARTICLE 1. DEFINITIONS**

**R4-6-101. Definitions**

In addition to the definitions set forth at A.R.S. § 32-3251, in this Chapter, unless the context otherwise requires:

"Administrative completeness review" means the Board's determination of whether all documents and information required by statute or rule to be contained in an application packet have been provided and are complete.

"Applicant" means an individual who seeks certification or renewal of certification by submitting a completed application packet to the Board Office.

"Application packet" means a variety of forms and documents obtained from and submitted to the Board Office by an applicant.

"A.A.S.S.W.B." means the American Association of State Social Work Boards.

"C.A.C.R.E.P." means the Council on Accreditation for Counseling and Related Educational Programs.

"C.O.R.E." means the Council on Rehabilitation Education.

"Certified behavioral health professional" means an individual holding a current Board of Behavioral Health Examiners certification.

"Clock hour" means 60 minutes.

"Continuing education" means attendance at programs such as seminars, workshops, or institutes at which a topic is presented in detail, and that have stated learning objectives and are appropriate for the purpose of maintaining and furthering the skills and competency of the professional.

"Council on Social Work Education" (CSWE) means the nationally recognized accrediting body for schools of social work.

"Cut score study" means the methodology used to establish the minimum acceptable score that an applicant must obtain on a certification examination.

"Date of service" means the date mailed by regular United States mail to the last address placed on file in the Board Office in writing by the applicant or certified professional.

"Days" means calendar days.

"Direct supervision" means the supervisor has immediate responsibility and oversight for all client contact by a supervisee.

"Equivalent foreign degree" means completion of a program of study at a school outside of the U.S. that is either accredited by an agency whose academic accreditation

standards meet or exceed those of a regionally accredited college or university or approved by the appropriate Credentialing Committee.

"Equivalent part-time work experience" means the accumulation of 3200 hours of work experience during more than 24 months.

"Four years of work experience" means the accumulation of 6400 hours of work experience in no less than 48 months within the 7 years before the date of application.

"Full-time work experience" means the accumulation of 1600 hours of work experience in 12 months.

"Gross negligence" means the careless disregard of established principles of practice or the repeated failure to exercise the care that a prudent practitioner would exercise within the scope of professional practice.

"Group supervision" means the supervision of 2 but no more than 6 supervisees.

"Immediate family" means parents, spouse, former spouse, siblings, half-siblings, children, cousins, in-laws (present or former), aunts, uncles, grandparents, grandchildren, stepchildren, and stepparents.

"Independent practice" means acting as a certified behavioral health professional outside the context of an employee-employer relationship usually on a fee-for-service basis.

"Inactive status" means a certified professional has temporarily suspended practice under Arizona certification by postponing renewal of certification for a maximum of 24 months.

"Individual supervision" means personal, one-to-one communication with the supervisee.

"Ineligible" means failure to meet the required minimum standards for certification.

"Licensed behavioral health professional" means an individual holding a license to practice a behavioral health profession in Arizona or another state.

"One year of work experience" means the accumulation of 1600 hours of work experience in not less than 12 months.

"Practice of substance abuse counseling" means the direct application of professional counseling techniques to individuals who are dependent upon or abuse substances, and related persons affected by the abuse or dependency.

"Professional supervision" means the relationship between a supervisee and a certified or licensed behavioral health professional that assists the supervisee to develop skill and responsibility to provide behavioral health services.

"Quorum" means 7 members of the Board or a majority of the appointed members of a Credentialing Committee.

"Reciprocity" means the acceptance of a license, certification, or registration from another state as meeting all certification requirements for Arizona.

"Regionally accredited college or university" means an institution of higher education that is recognized as maintaining applicable standards by the:

- a. New England Association of Schools and Colleges,
- b. Middle States Association of Colleges and Schools,
- c. North Central Association of Colleges and Schools,
- d. Northwest Association of Schools and Colleges,

- e. Southern Association of Schools and Colleges, or
- f. Western Association of Schools and Colleges.

"Substance abuse or chemical dependency" means the chronic, habitual, or compulsive use of any chemical matter, which when introduced into the body is capable of altering human behavior or mental functioning, and which with extended use may cause psychological or physiological dependence or both.

"Substantive review" means a determination by a Credentialing Committee that an applicant is eligible for certification.

"Two years of work experience" means the accumulation of 3200 hours of work experience in no less than 24 months.

"Work experience" means practicing Social Work, Marriage and Family Therapy, Counseling, or Substance Abuse Counseling for remuneration or on a voluntary basis.

**ARTICLE 2. GENERAL PROVISIONS**

**R4-6-201. Board Meetings**

The Board shall meet at least annually in December. The Board shall hold additional meetings as necessary to conduct the Board's business. Meetings may be convened by the Chair, a majority vote of the Board members, or upon written request from 2 Board members. The Board shall conduct official business only when a quorum is present.

**R4-6-202. Board Elections**

At the annual meeting in December, the Board shall elect, by a majority vote of the Board members present, a Chair and a Secretary/Treasurer. A vacancy that occurs in either office shall be filled, by a majority vote of the Board members present, at the 1st Board meeting following the vacancy.

**R4-6-203. Credentialing Committee Meetings**

Each Credentialing Committee shall meet at least annually in December. A Credentialing Committee shall hold additional meetings as necessary to conduct the Credentialing Committee's business. Meetings may be convened by the Chair of the Credentialing Committee, a majority vote of the Credentialing Committee, or upon written request from 2 Credentialing Committee members. A Credentialing Committee shall conduct official business only when a quorum is present.

**R4-6-204. Credentialing Committee Elections**

At the Credentialing Committee meeting in December of each year, the Credentialing Committee shall elect, by a majority vote of the Credentialing Committee members present, a Chair and Secretary/Treasurer. A vacancy that occurs in either office shall be filled, by a majority vote of the Credentialing Committee members present, at the 1st Credentialing Committee meeting following the vacancy.

**R4-6-205. Change of Address**

A certified behavioral health professional or applicant shall notify the Board in writing within 30 days of any change of mailing address.

**R4-6-206. Change of Name**

A certified behavioral health professional or an applicant shall notify the Board in writing within 30 days of a name change.

**R4-6-207. Confidential Records**

- A. All Board or Credentialing Committee records shall be open to public inspection and copying, except the following, which have been determined to be confidential:
  - 1. Minutes of executive session;

- 2. Records classified as confidential by other laws, rules, or regulations applicable to the Board or Credentialing Committees;
  - 3. College or university grades, medical or mental health information, and professional references of applicants except that the individual who is the subject of the information may view or copy the records;
  - 4. Records for which the Board or Credentialing Committee determines that public disclosure would have a significant adverse effect on the Board's or Credentialing Committee's ability to perform its duties or which would otherwise be detrimental to the best interests of the state. When the Board or Credentialing Committee determines that the reason justifying the confidentiality of the records no longer exists, the record shall be made available for public inspection and copying; and
  - 5. Information regarding a complaint under investigation if that information may compromise the investigation.
- B. Persons wanting to inspect Board or Credentialing Committee records may do so at the Board Office Monday through Friday, 8 a.m. to 5 p.m., except holidays.

**R4-6-208. Conviction of a Felony**

The Board shall consider the following factors to determine whether a felony conviction will result in imposing disciplinary sanctions on a Certified behavioral health professional, refusing to renew the certification of a Certified behavioral health professional, or refusing to issue a certificate to an applicant:

- 1. Length of time since the conviction;
- 2. Relationship between the practice of the profession and the conduct giving rise to the conviction; and
- 3. Efforts made toward rehabilitation.

**R4-6-209. Date of Service Extensions**

Deadlines established by date of service may be extended a maximum of 2 times by the chair of the Board or the chair of the Credentialing Committee if good cause is documented in a written request postmarked or received by the Board Office no later than the required deadline. Good cause may be shown through documented illness or other unavoidable hardship. Extensions shall not be granted for renewal submission deadlines or late renewal submission deadlines.

**R4-6-210. Education - Accreditation Requirements**

An applicant shall fulfill the education requirements by earning the degree required for certification at a college or university regionally accredited at the time of the applicant's graduation or by earning an equivalent foreign degree.

**R4-6-211. Supervision - Prohibition**

Supervision (including direct, group, individual, or professional) shall not be provided by an immediate family member or other individual whose objective assessment of the supervisee's performance may be limited by a relationship with the supervisee.

**R4-6-212. Fees**

- A. The Board shall establish at its December meeting fees for:
  - 1. Application for certification,
  - 2. Biennial renewal,
  - 3. Duplicate certificate,
  - 4. Late renewal,
  - 5. Inactive status,
  - 6. Transfer of application from one certification level to another within the same profession,
  - 7. Transfer of application for certification in 1 profession to another profession before a Credentialing Committee vote on eligibility,
  - 8. Reassessment of eligibility,

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- 9. General copying of records,
  - 10. Commercial copying of records,
  - 11. Copying audio tapes,
  - 12. Verification of certification,
  - 13. Publications of private practice status,
  - 14. Duplicate identification card,
  - 15. Rules/Statutes/Directory, and
  - 16. Returned personal checks due to insufficient funds.
- B. All fees shall be paid by certified check, cashier's check, or money order for any amount greater than \$25. Cash or personal or business checks for amounts less than \$25 shall be accepted.
- C. The Board shall make the current fee schedule available to the public upon request to the Board Office.
- D. Fees for the required examination are set by contract between the Board and the examination service.

**R4-6-213. Foreign Equivalency Determination**

To enable the Credentialing Committee to determine whether a foreign degree meets the educational standards set by the Board, the applicant shall have the foreign degree evaluated by an agency that has demonstrated competence in determining the equivalency of educational standards and shall cause the results of the evaluation to be mailed directly to the Credentialing Committee.

**ARTICLE 3. CERTIFICATION**

**R4-6-301. Application Process**

- A. An applicant for certification shall submit the following to the Board Office:
- 1. A completed application form signed by the applicant and notarized;
  - 2. Certified check, cashier's check, or money order for the application fee; and
  - 3. Other documents requested by the Credentialing Committee to determine the applicant's eligibility.
- B. An applicant shall cause an official transcript or official education documentation acceptable to the Credentialing Committee to be sent directly to the Board Office by the educational institution.
- C. The Board Office shall finish an administrative completeness review within 90 days from the date of receipt of an application.
- 1. The Board Office shall issue a written notice of administrative completeness to an applicant if no deficiencies are found in the application packet.
  - 2. If deficiencies are found in the application packet, the Board Office shall provide a written comprehensive list of the deficiencies to the applicant and the 90-day time frame for the Board Office to finish the administrative completeness review shall be suspended from the date the deficiency notice is served until the applicant provides the Board Office with all deficient information.
- D. An applicant shall submit all of the deficient information within 60 days of the date of service of the deficiency notice.
- 1. If an applicant cannot submit all deficient information within 60 days of the date of service of the deficiency notice, the applicant may obtain an extension by submitting a written request to the Board Office post marked or delivered no later than 60 days from the date of service of the deficiency notice.
  - 2. The written request for an extension shall document the reasons the applicant is unable to meet the 60-day deadline.
  - 3. The Credentialing Committee shall review the request for an extension of the 60-day deadline and grant the request if the Credentialing Committee determines that an extension

of the 60-day deadline will enable the applicant to assemble and submit the deficient information. An extension of the 60-day deadline shall be for no more than 60 days. An applicant who requires an additional extension shall submit an additional written request in accordance with this subsection. The Credentialing Committee shall notify the applicant in writing of its decision to grant or deny the request for an extension.

- E. From the date on which the administrative completeness review of an application is finished, the appropriate Credentialing Committee shall complete a substantive review of the applicant's qualifications in no more than 180 days.
- 1. If an applicant is found to be ineligible, the Credentialing Committee shall issue a written notice of denial to the applicant.
  - 2. If an applicant is found to be eligible, the Credentialing Committee shall recommend to the Board that the applicant be certified. Upon receipt of the Credentialing Committee's recommendation, the Board shall either certify the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Credentialing Committee.
  - 3. If the Credentialing Committee finds deficiencies during the substantive review of the application, the Credentialing Committee shall issue a written request to the applicant for additional documentation. If the Credentialing Committee determines the applicant has not taken and passed a certification examination, the request for additional information shall include the approval and requirement that the applicant take and pass a certification examination.
  - 4. The 180-day time frame for a substantive review for the issuance of a certificate or denial shall be suspended from the date of the written request for additional documentation until the date that all documentation is received.
  - 5. When the applicant and the Credentialing Committee mutually agree in writing, the 180-day substantive review time frame may be extended for no more than 60 days.
- E. For the purpose of A.R.S. § 41-1072 et. seq., the Board establishes the following time frames for both initial and renewal certifications:
- 1. Administrative completeness review time frame: 90 days
  - 2. Substantive review time frame: 180 days
  - 3. Overall time frame: 270 days

**R4-6-302. Reassessment**

- A. An applicant who is found ineligible may submit to the Board Office a written request for reassessment of the application within 12 months of the date of service of the notice of ineligibility.
- B. The Credentialing Committee shall grant a request for reassessment if:
- 1. There has been a statutory or rule change that enables the previously ineligible applicant to meet the requirements for certification; or
  - 2. The applicant was initially determined ineligible because of deficiencies in experience, supervision, or course work and has removed all deficiencies.
- C. An applicant requesting a reassessment shall use a form provided by the Board and shall submit the proper fee with the reassessment form.

**R4-6-303. Reciprocity**

- A. An applicant eligible for certification by reciprocity shall be exempt only from the required certification examination. An applicant requesting certification by reciprocity shall:
- 1. Submit a completed application for certification by reci-

- pracity;
2. Submit a certified check, cashier's check, or money order for the proper fee; and
  3. Cause an official statement, on a form approved by the Board, to be sent directly to the Board Office from the state in which the applicant is currently licensed, certified, or registered indicating whether the license, certification, or registration is in effect and in good standing.
- B. The Credentialing Committee shall review applications for certification by reciprocity to determine whether the applicant is eligible. The Credentialing Committee shall base its decision upon a determination of whether the other state's requirements for certification, licensure, or registration at the time the applicant was credentialed, meet or exceed the requirements for Arizona certification.
- C. The Credentialing Committee shall exempt from the Arizona examination requirement, applicants for certification by reciprocity who were credentialed without an examination by another state on or before December 31, 1991.
- D. Certification by reciprocity is not available for applicants who were credentialed in another state on or after January 1, 1992.
- E. Certification by reciprocity is not available for applicants for certification as an Associate Marriage and Family Therapist or a Marriage and Family Therapist.

**R4-6-304. Inactive Status**

- A. To go on inactive status, a certified behavioral health professional shall:
1. Submit a written request to be placed in inactive status to the Credentialing Committee before expiration of the current certification, and
  2. Submit a late fee if the request to be placed in inactive status is submitted after but within 3 months of expiration of the current certification.
- B. The Credentialing Committee shall grant a request to be placed in inactive status if the certified behavioral health professional making the request establishes that a hardship situation exists.
- C. To remove certification from inactive status, a certified behavioral health professional in inactive status shall meet all continuing education requirements including completion of 40 clock hours of continuing education activities during the 24 months before renewal of certification.
- D. A written request for modification or reduction of the continuing education requirement received from a certified behavioral health professional in inactive status shall be granted by the appropriate Credentialing Committee upon a showing of good cause.
- E. A certified behavioral health professional in inactive status shall not practice as a certified behavioral health professional.

**ARTICLE 4. SOCIAL WORK**

**R4-6-401. Curriculum**

- A. An applicant for certification as a Baccalaureate Social Worker shall have earned a Baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the Council on Social Work Education or an equivalent foreign degree evaluated by the Foreign Equivalency Determination Service of the Council on Social Work Education.
- B. An applicant for certification as a Master Social Worker or an Independent Social Worker shall have earned a Master's degree in social work from a regionally accredited college or university in a program accredited by the Council on Social Work Education or an equivalent foreign degree evaluated by the Foreign Equivalency Determination Service of the Council

on Social Work Education.

**R4-6-402. Examination**

- A. To be certified as a Baccalaureate Social Worker, an applicant shall receive a passing score, established by a cut score study, on the Basic Examination offered by A.A.S.S.W.B. The passing point shall be a scaled score of 75.
- B. To be certified as a Master Social Worker, an applicant shall receive a passing score, established by a cut score study, on the Intermediate Examination offered by A.A.S.S.W.B. The passing point shall be a scaled score of 75.
- C. To be certified as an Independent Social Worker, an applicant shall receive a passing score, established by a cut score study, on either the Advanced or Clinical Examination offered by A.A.S.S.W.B. The passing point shall be a scaled score of 75.
- D. An applicant for certification by examination shall pass the required examination for the level of certification requested within 6 months after the date of service of the written request for additional documentation described in R4-6-301(E)(3) which includes the requirement that the applicant take and pass the certification examination. If the examination is not passed within 6 months after the date of service of the request for additional documentation, the application file shall be closed with no recourse to appeal. To receive further consideration for certification, the applicant shall submit a new application and fee.

**R4-6-403. Work Experience for the Independent Social Work Certification**

After completing a Master's degree, an applicant for the Independent Social Work certification shall complete a minimum of 2 years of full-time or the equivalent part-time supervised work experience in social work.

**R4-6-404. Professional Supervision for Independent Social Work Certification**

- A. During the 2 years of required supervised work experience, an applicant for Independent Social Work certification shall receive at least 100 hours of professional supervision. There shall be 50 hours of professional supervision during each year of work experience.
- B. Professional supervision of an applicant for Independent Social Work certification shall be provided by a Certified Independent Social Worker (CISW).
- C. An applicant for Independent Social Work certification who completed the professional supervision requirement before December 31, 1991, may have been supervised by an individual who was a behavioral health professional certified or licensed by a state or national professional organization acceptable to the Social Work Credentialing Committee.
- D. Professional supervision may include both individual and group supervision. Group supervision hours shall not exceed individual supervision hours.
- E. An applicant may make a written request to the Social Work Credentialing Committee for an exemption from the requirements of subsections (B) or (D) or both. The Social Work Credentialing Committee shall review the request for exemption to determine whether the proposed supervisor has the necessary education, training, and experience to provide supervision acceptable for an Independent Social Work certificate. If the proposed supervisor has the necessary education, training, and experience, the Social Work Credentialing Committee shall grant the request for exemption. Exemptions to the supervision requirement shall not be granted retroactively for supervision received before the date of the request, unless approved by the Social Work Credentialing Committee on an individual basis.

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**R4-6-405. Certified Master Social Worker and Certified Baccalaureate Social Worker - Independent Practice Prohibition**

Neither a Certified Master Social Worker nor a Certified Baccalaureate Social Worker shall practice independently. A Certified Master Social Worker and a Certified Baccalaureate Social Worker shall practice only under direct supervision.

**ARTICLE 5. COUNSELING**

**R4-6-501. Curriculum**

- A. An applicant for certification as an Associate Counselor or a Professional Counselor shall have earned a Master's degree or a higher degree, with a major emphasis in counseling. The degree shall either be from a regionally accredited college or university in a program that consists of a minimum of 48 semester or 72 quarter credit hours or be from a program accredited by CACREP or CORE, or shall be an equivalent foreign degree.
- B. The curriculum for the 48 semester or 72 quarter credit hour degree shall include:
1. One 3-semester or 4-quarter credit hour course from each of the following 4 content areas:
    - a. Counseling Theory - study of theories, principles, and their application. This includes but is not limited to such theories as client-centered, behaviorism, psychoanalytic, gestalt, rational-emoive, reality, Adlerian, and Jungian theories;
    - b. Supervised Counseling Practicum - provision of counseling services within an educational or professional setting under the direction of a faculty member or supervisor designated by the college or university;
    - c. Multi-cultural Foundations - studies that provide a broad understanding of cultures and the implications for counseling with individuals and families within the major racial and cultural groups in the U.S.; and
    - d. Professional Counseling Ethics - studies that provide a broad understanding of professional counseling ethics, legal standards, and responsibilities; and
  2. Five 3-semester or 4-quarter credit hour courses from the following 7 content areas:
    - a. Human Growth and Development - studies that provide a broad understanding of the personality development of individuals, including normal and abnormal behavior;
    - b. The Helping Relationship - studies that provide a broad understanding of the counseling processes, basic and advanced interview skills, consultation theories, and their applications;
    - c. Group Dynamics Processing and Counseling - studies that provide a broad understanding of group development and dynamics, group counseling theories, group leadership styles, and basic and advanced group counseling methods and skills;
    - d. Life and Career Development - studies that provide a broad understanding of career development theories; occupational and educational information sources and systems; career and leisure counseling, guidance, and education; career decision making, and career development program planning and placement;
    - e. Social and Lifestyle Issues - studies that provide a broad understanding of social norms, changes, and trends, human roles, and alternative lifestyles;
    - f. Appraisal of Individuals - studies that provide a broad understanding of group and individual psy-

chometric theories, formal and informal approaches to appraisal, data and information gathering methods, validity and reliability, factors influencing appraisals, diagnostic procedures, and use of appraisal results in the helping process; and

- g. Research and Evaluation - studies that provide a broad understanding of types of research, statistics, research-report development, research implementation, program evaluation, needs assessment, and publication of research.
3. The remaining 48 semester or 72 quarter credit hours of the Master's degree or a higher degree shall consist of courses in counseling-related subjects which include psychology, marriage and family studies, substance abuse, career counseling, and rehabilitation studies.
- C. To receive credit towards certification, an applicant shall complete each course with a passing grade.
- D. To be applicable towards curriculum requirements, a course taken before an applicant was accepted into a Master's degree program shall have been used by the applicant to meet Master's degree requirements.
- E. An applicant with a degree of less than 48 semester or 72 quarter credit hours shall be deemed to have fulfilled the curriculum requirement for certification if the degree was received before July 1, 1989, and all other current curriculum requirements are met.
- F. An applicant for Certified Professional Counselor who received a Master's degree before 7/1/89 and whose program of study did not include a practicum shall complete 3 years of post-master's degree work experience in counseling, 2 years of which must be supervised, before being eligible for certification. One year of a doctoral-clinical internship may be substituted for 1 year of supervised work experience.
- G. An applicant who does not meet all curriculum requirements shall be determined ineligible.
1. If an applicant is determined ineligible but has a Master's degree or a higher degree with a major emphasis in counseling, the applicant may submit a request for reassessment in accordance with R4-6-302.
  2. An ineligible applicant is considered to have a degree with a major emphasis in counseling if the ineligibility results from curriculum deficiencies that constitute no more than 15 semester or 20 quarter credit hours.

**R4-6-502. Examination**

- A. The Counseling Credentialing Committee approves the certification examinations of the following organizations:
1. National Board for Certified Counselors,
  2. Commission on Rehabilitation Counselor Certification, and
  3. National Academy of Certified Clinical Mental Health Counselors.
- B. To be certified, an applicant for Professional Counselor and Associate Counselor certification shall receive a passing score, established by a cut score study, on an approved certification examination.
- C. An applicant for certification by examination shall pass the examination within 6 months after the date of service of the written request for additional documentation described in R4-6-301(E)(3), which includes the requirement that the applicant take and pass the certification examination. The requirement that the certification examination be passed within 6 months may be extended as described in subsection (D).
- D. The Board shall schedule the National Board for Certified Counselors examination for applicants who have not previously taken and passed an approved examination. If the National Board for Certified Counselors examination is

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offered only once within the 6 months referenced in subsection (C), the Board shall grant the applicant an automatic extension to the date of the 2nd examination. If the examination is not passed within the 6 months referenced in subsection (C) or, if applicable, the automatic extension to the date of the 2nd examination, the applicant's file shall be closed with no recourse to appeal. To receive further consideration for certification, the applicant shall submit a new application and fee.

- E. Applicants who wish to take a certification examination other than that of the National Board for Certified Counselors, shall apply directly to take the examination of the Commission on Rehabilitation Counselor Certification or the National Academy of Certified Clinical Mental Health Counselors and shall cause the score obtained on the certification examination to be submitted directly to the Board by the examining organization.

**R4-6-503. Work Experience for the Professional Counselor Certification**

- A. After completing a Master's degree, an applicant for the Professional Counselor certification who obtained the Master's degree from a program not accredited by C.O.R.E. or C.A.C.R.E.P. shall complete a minimum of 2 years of full-time or the equivalent part-time supervised work experience in counseling.
- B. After completing a Master's degree, an applicant for the Professional Counselor certification who obtained the Master's degree from a program accredited by C.O.R.E. or C.A.C.R.E.P. shall complete a minimum of 1 year of full-time or the equivalent part-time supervised work experience in counseling.

**R4-6-504. Supervision for Professional Counselor Certification**

- A. During the period of required full-time or equivalent part-time supervised work experience, an applicant for Professional Counselor certification shall receive at least 50 hours of professional supervision during each year of work experience.
- B. An applicant for Professional Counselor certification shall receive the professional supervision required by subsection (A) from a Certified Professional Counselor or an individual eligible for such certification. Pursuant to Lawss 1991, Ch. 253, Section 4(c), an applicant for Professional Counselor certification who meets all other requirements may submit a written request to the Counseling Credentialing Committee for waiver of the requirement that professional supervision be provided by a Certified Professional Counselor or an individual eligible for such certification. The Counseling Credentialing Committee shall grant the waiver if it determines the applicant was supervised by a certified or licensed behavioral health professional or other behavioral health professional who has education, supervision, and experience acceptable to the Counseling Credentialing Committee.

**R4-6-505. Certified Associate Counselor**

- A. There is no experience requirement for certification as an Associate Counselor.
- B. A Certified Associate Counselor shall not practice independently. A Certified Associate Counselor shall practice only under direct supervision.

**ARTICLE 6. MARRIAGE AND FAMILY THERAPY**

**R4-6-601. Curriculum**

- A. An applicant for certification as an Associate Marriage and Family Therapist or a Marriage and Family Therapist shall have earned a Master's degree or a higher degree in a behavioral science from a regionally accredited college or university. The degree shall be a program:

1. Accredited by the Commission on Accreditation for Marriage and Family Therapy Education; or
2. That the Marriage and Family Therapy Credentialing Committee determines is substantially equivalent. A program is substantially equivalent if it includes the following courses for a minimum of 3-semester or 4-quarter credit hours each:
  - a. Marriage and Family Studies (3 courses): Studies of introductory systems theory, family development, family systems (marital, sibling, individual sub-systems), special family issues, and gender and cultural issues, all with a major focus from a systems theory orientation;
  - b. Marriage and Family Therapy (3 courses): Studies of advanced systems theory and interventions, major systemic marriage and family treatment approaches, structural, strategic, neo-analytic, group therapy, behavioral marriage and family therapy, communications, and sex therapy;
  - c. Human Development (3 courses): Studies of normal and abnormal human development, personality theory, human sexuality, and psychopathology and abnormal behavior, which may be integrated with systems theory;
  - d. Professional Studies (1 course): Studies of professional ethics as a therapist including legal and ethical responsibilities and liabilities, and family law; and
  - e. Research (1 course): Studies of research design, methodology, and statistics in marriage and family therapy.

- B. An applicant for certification as a Marriage and Family Therapist shall complete a supervised internship as part of the Master's degree curriculum or a supervised internship of a minimum of 12 months after completion of the Master's degree.

1. The supervised internship, whether fulfilled during or after completion of the Master's degree, shall consist of at least 300 client-contact hours under direct supervision.
2. A Certified Marriage and Family Therapist or an individual determined by the Marriage and Family Therapy Credentialing Committee as qualified to provide supervision shall supervise the internship of an applicant for certification as a Marriage and Family Therapist. The Marriage and Family Therapy Credentialing Committee shall determine whether an individual is qualified to provide supervision by evaluating the individual's education, experience, and training.

**R4-6-602. Examination**

- A. The Marriage and Family Therapy Credentialing Committee approves the certification examination of the Professional Examination Service's Licensing Examination for Marital and Family Therapy.
- B. To be certified, an applicant for Associate Marriage and Family Therapy or Marriage and Family Therapy certification shall receive a passing score, established by the cut score study, on an approved certification examination.
- C. An applicant shall pass the examination within 6 months after the date of service of the written request for additional documentation described in R4-6-301(F)(3), which includes the requirement that the applicant take and pass the certification examination. The requirement that the certification examination be passed within 6 months may be extended as described in subsection (D).
- D. The Board shall schedule the Professional Examination Service's Licensing Examination for Marital and Family Therapy

for applicants who have not previously taken and passed an approved examination. If the Professional Examination Service's Licensing Examination for Marital and Family Therapy is offered only once within the 6 months referenced in subsection (C), the Board shall grant the applicant an automatic extension to the date of the 2nd examination. If the examination is not passed within the 6 months referenced in subsection (C) or, if applicable, the automatic extension to the date of the 2nd examination, the applicant's file shall be closed with no recourse to appeal. To receive further consideration for certification, the applicant shall submit a new application and fee.

**R4-6-603. Work Experience for Marriage and Family Therapy Certification**

After completing a Master's degree, an applicant for certification as a Marriage and Family Therapist shall complete a minimum of 2 years of full-time or the equivalent part-time professionally supervised work experience in the practice of Marriage and Family Therapy.

**R4-6-604. Professional Supervision for Marriage and Family Therapy Certification**

An applicant for certification as a Marriage and Family Therapist shall receive a minimum of 200 hours of direct supervision on 1000 client-contact hours during the 2 years of professionally supervised work experience referenced in R4-6-603.

1. An applicant shall be permitted to apply a maximum of 30 hours of direct supervision and 300 client-contact hours obtained during the internship referenced in R4-6-601(B) towards the supervision requirement.
2. An applicant shall be permitted to meet the supervision requirement by receiving both individual and group supervision. Group supervision shall be no more than 50 of the 200 required hours of direct supervision during the 2 years of professionally supervised work experience.
3. Supervision of an applicant for certification as a Marriage and Family Therapist shall be provided by a Certified Marriage and Family Therapist.
4. An applicant who completed the professional supervision requirement before December 31, 1991, may have been supervised by an individual who was a behavioral health professional licensed or certified by a state or national professional organization acceptable to the Marriage and Family Therapy Credentialing Committee.
5. An applicant may make a written request to the Marriage and Family Therapy Credentialing Committee for an exemption from the requirement of subsection (C). The Marriage and Family Therapy Credentialing Committee shall review the request for exemption to determine whether the proposed supervisor has the necessary education, training, and experience to provide supervision acceptable for a Marriage and Family Therapist certification. If the proposed supervisor has the necessary education, training, and experience, the Marriage and Family Therapy Credentialing Committee shall grant the request for an exemption.

**R4-6-605. Post-degree Programs**

- A. An applicant who has a Master's degree or a higher degree in a behavioral health science, but who does not meet all curriculum requirements may take post-graduate courses to remove any deficiencies.
- B. Applicants for certification as a Marriage and Family Therapist shall be permitted to remove deficiencies by attending a non-accredited institute approved by the Marriage and Family Therapy Credentialing Committee. The Marriage and Family Therapy Credentialing Committee shall approve a non-accred-

ited institute if it determines the institute meets the following criteria:

1. Supervision of the applicant is provided by a Certified Marriage and Family Therapist.
2. Curriculum is consistent with current Board requirements, and
3. Faculty has credentials consistent with the standards of the field.

**R4-6-606. Certified Associate Marriage and Family Therapist**

- A. There is no experience requirement for certification as an Associate Marriage and Family Therapist.
- B. A Certified Associate Marriage and Family Therapist shall not practice independently. A Certified Associate Marriage and Family Therapist shall practice only under direct supervision.

**ARTICLE 7. SUBSTANCE ABUSE COUNSELING AND TREATMENT**

**R4-6-701. Education and Work Experience**

- A. An applicant for certification as a Substance Abuse Counselor shall meet 1 of the following:
  1. A Master's or Doctorate degree with an emphasis in counseling. The degree shall be:
    - a. From a regionally accredited college or university, in a behavioral science, with at least 24 semester or 32 quarter credit hours of counseling-related courses;
    - b. From a regionally accredited college or university, in a program the Substance Abuse Credentialing Committee determines is substantially equivalent to the degree described in subsection (A)(1)(a); or
    - c. An equivalent foreign degree;
  2. A Bachelor's degree with an emphasis in counseling and 2 years of work experience counseling substance abusers under professional supervision. The degree shall be:
    - a. From a regionally accredited college or university, in a behavioral science, with at least 30 semester or 40 quarter credit hours of counseling-related courses;
    - b. From a regionally accredited college or university, in a program the Substance Abuse Credentialing Committee determines is substantially equivalent to the degree described in subsection (A)(2)(a); or
    - c. An equivalent foreign degree;
  3. An Associate of Applied Science degree in Chemical Dependency with an emphasis in counseling and 2 years of work experience counseling substance abusers under professional supervision. The degree shall be:
    - a. From a regionally accredited college or university, in a behavioral science, with at least 30 semester or 40 quarter credit hours of counseling-related courses;
    - b. From a regionally accredited college or university, in a program the Substance Abuse Credentialing Committee determines is substantially equivalent to the degree described in subsection (A)(3)(a); or
    - c. An equivalent foreign degree; or
  4. A high school diploma or equivalent (GED) and 4 years of work experience counseling substance abusers under professional supervision.
- B. An applicant who does not meet all curriculum requirements in the applicant's Doctorate, Master's, Bachelor's, or Associate of Applied Science degree in Chemical Dependency with an emphasis in counseling shall be determined ineligible. If the applicant is determined ineligible, the applicant may make

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up the deficiency and submit a request for reassessment in accordance with R4-6-302.

**R4-6-702. Examination**

- A. The Substance Abuse Counseling Credentialing Committee approves the certification examinations of the following organizations:
1. International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC/AODA), and
  2. National Association of Alcoholism and Drug Abuse Counselors (NAADAC).
- B. To be certified, an applicant for Substance Abuse Counselor certification shall receive a passing score, established by a cut score study, on an approved certification examination.
- C. An applicant for certification by examination shall pass the examination within 6 months after the date of service of the written request for additional documentation described in R4-6-301(E)(3), which includes the requirement that the applicant take and pass the certification examination. The requirement that the certification examination be passed within 6 months may be extended as described in subsection (D).
- D. The Board shall schedule the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse examination for applicants who have not previously taken and passed an approved examination. If the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse examination is offered only once within the 6 months referenced in subsection (C), the Board shall grant the applicant an automatic extension to the date of the 2nd examination. If the examination is not passed within the 6 months referenced in subsection (C) or, if applicable, the automatic extension to the date of the 2nd examination, the applicant's file shall be closed with no recourse to appeal. To receive further consideration for certification, the applicant shall submit a new application and fee.
- E. Applicants who wish to take a certification examination other than that of the Certification Reciprocity Consortium/Alcohol and Other Drug Abuse, shall apply directly to the National Association of Alcoholism and Drug Abuse Counselors to take its examination and shall cause the score obtained on the certification examination to be submitted directly to the Board by the examining organization.

**R4-6-703. Work Experience for the Substance Abuse Counselor Certification**

- A. An applicant for certification as a Substance Abuse Counselor shall complete paid or volunteer work experience in a program that provides alcohol or drug abuse diagnosis, treatment, or referral for treatment.
- B. An applicant for certification as a Substance Abuse Counselor shall demonstrate satisfactory performance in the following areas: intake, assessment, triage, crisis intervention, treatment planning, family, group, and individual counseling, outreach, and consultation with other professionals by having the applicant's supervisor submit performance evaluations on forms available from the Board.
- C. If an applicant is unable to have a supervisor submit a performance evaluation, the applicant shall request a waiver of the requirement by filing with the Board a written statement explaining the reason why a performance evaluation cannot be obtained. The applicant requesting a waiver shall supply a written statement from other Behavioral Health Professionals eligible for Substance Abuse Counselor certification attesting to the applicant's competence in the skills listed in subsection (B).
- D. The time span covered by the performance evaluations or the statements shall equal that for the work experience required by

R4-6-701 for the applicant's education level.

- E. All work experience required for Substance Abuse Counselor certification shall be professionally supervised.

**R4-6-704. Professional Supervision for Substance Abuse Counselor Certification**

Supervision of the work experience required for Substance Abuse Certification shall be provided by a Certified Substance Abuse Counselor or a behavioral health professional who has education, training, and experience acceptable to the Substance Abuse Credentialing Committee.

**ARTICLE 8. CERTIFICATE RENEWAL AND CONTINUING EDUCATION**

**R4-6-801. Renewal of Certification**

- A. To renew certification, a certified behavioral health professional shall submit the following to the Board Office:
1. A completed renewal application form that includes verification of all completed continuing education activities, is signed by the behavioral health professional, and is notarized;
  2. Certified check, cashier's check, or money order for the renewal fee; and
  3. Other documents requested by the Credentialing Committee to determine the behavioral health professional's continued eligibility.
- B. The certification of a certified behavioral health professional shall expire unless the certified behavioral health professional submits to the Board office the items listed in subsection (A) on or before the certification expiration date.
- C. The Board shall permit a behavioral health professional whose certification has expired, to renew certification by submitting a complete renewal application, and other documents requested by the Credentialing Committee, and a late fee within 3 months of the certification expiration date. Certification that is renewed under this rule shall be considered effective on the first of the month following the expiration date with no lapse in certification.
- D. The Board shall permit a certified behavioral health professional with insufficient continuing education hours for renewal to have 90 days from the date of service of notification of the insufficient hours to complete and submit documentation of the necessary continuing education hours. If the documentation of completed continuing education hours is not post-marked or received by the Board within 90 days from the date of service of notification, the certified behavioral health professional's certification shall expire, and the certified behavioral health professional's file will be closed with no recourse to appeal.

**R4-6-802. Continuing Education**

- A. To be eligible to renew certification, a certified behavioral health professional shall complete 40 clock hours of continuing education during the 2 years before the renewal date. A certified behavioral health professional shall maintain documentation of continuing education activities for 48 months following the date of the renewal certificate.
- B. The Board shall permit a certified behavioral health professional who maintains more than 1 certificate to apply the same continuing education hours for each certificate renewal if the content of the continuing education is relevant to each specific certification.
- C. A certified behavioral health professional shall report only continuing education clock hours obtained during the 2 years before renewal of certification.
- D. A maximum of 10 clock hours of continuing education may be from independent study, small group study, or professional

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research. A maximum of 10 clock hours of continuing education may be from 1st time presentations by the certified behavioral health professional.

- E. Continuing education activities shall relate to the scope of practice of the specific certification held. Continuing education activities include:
1. Activities sponsored or approved by national, regional, or state professional associations or organizations in the specialties of Marriage and Family Therapy, Professional Counseling, Social Work, Substance Abuse Counseling, or in the allied professions of Psychiatry, Psychiatric Nursing, Psychology, or Pastoral Counseling;
  2. Programs in the behavioral health field sponsored or approved by a regionally accredited college or university;
  3. In-service training, courses, or workshops in the behavioral health field sponsored by federal, state, or local social service agencies, public school systems, or licensed health facilities and hospitals;
  4. Graduate-level or undergraduate course work in the behavioral health field offered by regionally accredited colleges or universities. One semester-credit hour is equivalent to 15 clock hours of continuing education and 1 quarter-credit hour is equivalent to 10 clock hours of continuing education. Audited courses shall have hours in attendance documented;
  5. Independent or small group study in the behavioral health field including any of the following activities: listening to audio tapes, viewing video tapes, and reading, editing, or writing professional books or articles. Small group study may also include making presentations and reviewing case studies;
  6. Presentation by the applicant for the first time of an academic course, in-service training workshop, or seminar;
  7. Professional research on behavioral health topics; and
  8. Workshops, seminars, and conferences by nationally recognized presenters in the fields of behavioral health or related fields such as medicine or law.

**R4-6-803. Continuing Education Documentation**

The certified behavioral health professional shall retain the following documentation as evidence of participation in continuing education activities:

1. Independent study: a description of the activity, the subject material covered, and the dates and number of hours involved.
2. Conferences, seminars, and workshops: a signed certificate of attendance; a statement from the provider verifying participation in the activity; or other documents sufficient to demonstrate attendance such as canceled checks or conference programs.
3. First time presentations by the certified behavioral health professional: outlines, syllabi, or the curriculum used.
4. Independent or small group studies: a list of books, articles, and tapes reviewed and hours, and cases studied and hours.
5. Graduate or undergraduate course: an official transcript.

**ARTICLE 9. APPEAL OF CERTIFICATION OR RENEWAL INELIGIBILITY**

**R4-6-901. Appeal Process for Certification Ineligibility**

- A. An applicant for certification may be found ineligible because of an unprofessional practice or failure to meet the certification requirements of education, experience, or supervision, or both.
- B. If an applicant for certification is alleged to have engaged in an unprofessional practice, the procedures found in subsection

(D) shall be followed.

- C. If an applicant for certification is found ineligible because of failure to meet the certification requirements of education, experience, or supervision and if there is no allegation of unprofessional practice, the following procedures shall be used:
1. The Credentialing Committee shall send a letter to the applicant that provides the applicant notice of the determination of ineligibility and explains the basis for the determination.
  2. An applicant who wishes to appeal a determination of ineligibility shall submit a written request for review to the Credentialing Committee within 21 days from the date of service of the notice of ineligibility. If a review is not requested within the time provided, certification shall be denied and the applicant's file shall be closed without recourse to appeal.
  3. Upon receipt of an appeal of ineligibility, the Credentialing Committee shall consider the request; determine whether the applicant meets credentialing requirements; and issue a 2nd decision in writing. The Credentialing Committee shall send a written notice of this decision to the applicant.
  4. If the 2nd decision by the Credentialing Committee again denies eligibility for certification, an applicant who wishes to appeal the 2nd decision shall submit to the Credentialing Committee, a written request for an informal meeting with the Credentialing Committee within 21 days of the date of service of notice of the Credentialing Committee's 2nd decision. If an informal meeting is not requested within 21 days, certification shall be denied and the applicant's file shall be closed without recourse to appeal.
  5. If a request for an informal meeting is received within the required 21 days, the Credentialing Committee shall schedule the informal meeting and provide the applicant with written notice of the date, time, and location of the meeting at least 5 days before the meeting. At the informal meeting, the Credentialing Committee shall allow the applicant to present additional information verbally and in writing regarding the applicant's qualifications for certification.
  6. Upon completion of the informal meeting, the Credentialing Committee shall determine whether the applicant is eligible for certification and shall issue a 3rd decision. The Credentialing Committee shall send written notice of this decision to the applicant.
  7. If the 3rd decision by the Credentialing Committee again denies eligibility for certification, an applicant who wishes to appeal the 3rd decision shall submit within 21 days of the date of service of notice of the Credentialing Committee's 3rd decision, a written request to the Board for a formal administrative hearing pursuant to the Administrative Procedures Act, A.R.S. § 41-1061 et. seq. The request shall either be referred to the Office of Administrative Hearings for scheduling or scheduled before the Board. If a formal administrative hearing is not requested within 21 days, certification shall be denied and the applicant's file shall be closed with no recourse to appeal.
  8. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact and conclusions of law and shall enter an order either to grant or deny certification.
  9. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and con-

clusions of law and shall enter an order either to grant or deny certification.

10. The Board shall send the applicant a copy of the final findings of fact, conclusions of law, and order.

D. If a complaint or allegation of unprofessional practice is received before or while an applicant is under review for certification the following procedures shall be used:

1. The Credentialing Committee shall determine if the applicant has met the education, experience, and supervision requirements.

a. If an applicant is determined to be ineligible because of deficiencies in education, experience, or supervision, the Credentialing Committee shall notify the applicant of its determination in accordance with subsection (C)(1) and shall include in the notification a statement that an allegation that the applicant engaged in an unprofessional practice has been received by the Board and must be resolved in the applicant's favor before the applicant may be certified. If the applicant appeals this determination of ineligibility, the procedures in R4-6-1001(A) through (C) shall be followed. These procedures shall include a review and determination of all reasons the applicant may be determined ineligible.

b. If an applicant against whom an allegation of unprofessional practice has been made meets all education, experience, and supervision requirements, the procedures in R4-6-1001(A) through (C) shall be followed.

**R4-6-902. Appeal Process for Certificate Renewal Ineligibility**

A. A certified behavioral health professional for renewal may be found ineligible because of an unprofessional practice or failure to meet other renewal requirements, or both.

B. If an allegation of unprofessional practice has been made against a certified behavioral health professional for renewal, the Credentialing Committee shall determine whether the alleged unprofessional practice, if true, is severe enough to result in revocation of certification. If the Credentialing Committee determines that revocation is a likely outcome if the allegation is substantiated, the Credentialing Committee shall not renew the certified behavioral health professional's certificate and shall investigate the allegation in accordance with R4-6-1001. The Credentialing Committee shall include in the investigation a review and determination regarding all renewal requirements. If the Credentialing Committee determines that the alleged unprofessional practice, if substantiated, would not result in revocation of certification and if all other renewal requirements have been met, the Credentialing Committee shall issue a renewal certification to the certified behavioral health professional and shall investigate the allegation in accordance with R4-6-1001.

C. If an applicant for renewal certification is determined to be ineligible because of failure to meet renewal requirements and if there is no allegation of unprofessional practice, the following procedures shall apply:

1. The Credentialing Committee shall send a letter to the certified behavioral health professional that informs the certified behavioral health professional of the determination of ineligibility and explain the basis for the determination.

2. A certified behavioral health professional who wishes to appeal a determination of ineligibility for renewal certification shall submit a written request for an informal meeting to the Credentialing Committee within 21 days from the date of service of the notice of ineligibility. If

an informal meeting is not requested within the time provided, the renewal shall be denied and the certified behavioral health professional's file shall be closed without recourse to appeal.

3. If a request for an informal meeting is received within the required 21 days, the Credentialing Committee shall schedule an informal meeting with the certified behavioral health professional and provide written notice of the date, time, and location of the meeting at least 5 days before the meeting. At the informal meeting, the Credentialing Committee shall allow the certified behavioral health professional to present additional information verbally and in writing regarding the certified behavioral health professional's qualifications for renewal.

4. Upon completion of the informal meeting, the Credentialing Committee shall determine whether the certified behavioral health professional meets renewal requirements and shall issue a decision in writing. The Credentialing Committee shall send a written notice of this decision to the certified behavioral health professional.

5. A certified behavioral health professional who wishes to appeal a denial of renewal that results from an informal meeting, shall submit within 21 days of the date of service of notice of the Credentialing Committee's decision a written request to the Board for a formal administrative hearing pursuant to the Administrative Procedures Act, A.R.S. § 41-1061 et. seq. The request shall either be referred to the Office of Administrative Hearings for scheduling or scheduled before the Board. If a formal administrative hearing is not requested within 21 days, the renewal shall be denied and the certified behavioral health professional's file shall be closed without recourse to appeal.

6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact and conclusions of law and shall enter an order either to grant or deny renewal.

7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and shall enter an order either to grant or deny renewal.

8. The Board shall send the certified behavioral health professional a copy of the final findings of fact, conclusions of law, and order.

**ARTICLE 10. DISCIPLINARY PROCESS FOR UNPROFESSIONAL PRACTICES**

**R4-6-1001. Disciplinary Process for Unprofessional Practices**

A. If a written complaint alleging unprofessional practice by a certified behavioral health professional or an applicant is received by the Board, the Board shall immediately notify the individual complained against and require the individual complained against to submit a written response within 21 days from the date of service of notice of the complaint.

B. When the response of the individual complained against is received, the Credentialing Committee Chair or designee shall evaluate the complaint and response, and either schedule an informal meeting before the full Credentialing Committee with the individual complained against or schedule a document review of the written complaint and response by the full Credentialing Committee.

1. Complaints that the Credentialing Committee Chair or designee determines need further investigation shall be scheduled for an informal meeting with the individual complained against.

2. Complaints that the Credentialing Committee Chair or

designee determines do not need further investigation shall be scheduled for a document review.

- C. After the Credentialing Committee completes a document review of a complaint:
1. The Credentialing Committee shall dismiss the complaint if the Credentialing Committee finds the complaint is not a violation of a professional practice.
  2. The Credentialing Committee shall schedule an informal meeting with the individual complained against if the Credentialing Committee finds there is a possible violation of a professional practice or further investigation is required.
  3. The Credentialing Committee shall provide written notice of its decision to the complainant and the individual complained against within 15 days of its decision.
- D. After the Credentialing Committee completes an informal meeting with an individual complained against:
1. The Credentialing Committee shall dismiss the complaint if the Credentialing Committee finds the complaint is not a violation of a professional practice.
  2. The Credentialing Committee shall offer a consent agreement including general terms to the individual complained against if the Credentialing Committee finds a possible violation or violations of professional practices, and shall send a report of its findings to the individual complained against and the Board, and shall send its recommendation to the Board.
  3. Upon receipt of the report of the Credentialing Committee's findings and recommendation, the Board shall affirm, reverse, adopt, modify, supplement, amend, or reject the report, in whole or in part, and shall enter an order to dismiss the complaint, refer the complaint to a formal administrative hearing pursuant to A.R.S. § 41-1061 et. seq., or accept the consent agreement.
  4. The Board shall send written notice of its order to the complainant and the individual complained against within 15 days of entering the order.
- E. If the Board refers the complaint to a formal administrative hearing:
1. The complaint shall either be referred to the Office of Administrative Hearings for scheduling or scheduled before the Board.
  2. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact and conclusions of law and may issue an order of censure, impose a civil penalty of not more than \$500, impose probation, refuse to issue or renew a certificate, suspend or revoke a certificate for unprofessional practice, dismiss the complaint, or any combination of these disciplinary measures.
  3. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and may issue an order of censure, impose a civil penalty of not more than \$500, impose probation, refuse to issue or renew a certificate, suspend or revoke a certificate for unprofessional practice, dismiss the complaint, or any combination of these disciplinary measures.
  4. The Board shall send written notice of its order to the complainant and the within 15 days of entering the order.

**R4-6-1002. Summary Suspension**

If the Credentialing Committee Chair or designee finds, after conducting an initial evaluation of a complaint, that the alleged unpro-

fessional conduct of a certified behavioral health professional, if true, poses an imminent danger to the public, the Credentialing Committee Chair or designee shall notify the certified behavioral health professional of the finding and shall request that the Board Chair or designee call an emergency meeting of the Board. The Board shall request that the certified behavioral health professional attend the meeting. At the meeting the Board shall review all available information including statements by the certified behavioral health professional. The Board shall determine, based on this information, whether the interests of the public are in imminent danger. If so, the Board shall issue an order to suspend the certified behavioral health professional's certificate summarily.

**R4-6-1003. Review or Rehearing of a Board Decision**

- A. Except as provided in subsection (F), a party aggrieved by a decision of the Board that results from a formal administrative hearing may seek a review or rehearing of that decision by submitting a written request for a review or rehearing to the Board within 21 days from the date of service of the decision. The request shall specify the grounds for a review or rehearing. The Board shall grant a request for a review or rehearing for any of the following reasons materially affecting the rights of the aggrieved party:
1. Irregularity in the Board or Credentialing Committee's proceedings that deprived the aggrieved party of a fair hearing;
  2. Misconduct of the Board, the Credentialing Committee, or any duly authorized agent of the Board or the Credentialing Committee;
  3. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  4. Excessive penalties;
  5. Decision, findings of fact, or conclusions not justified by the evidence or contrary to law;
  6. Errors regarding the admission or rejection of evidence or errors of law that occur at the hearing.
- B. The Board shall determine whether 1 of the reasons listed in subsection (A) materially affected the rights of the aggrieved party and enter an order either to grant or deny the request for review or rehearing. The Board shall specify with particularity the reason the request is granted or denied.
- C. The Board shall send written notice of the decision to grant or deny a request for review or rehearing to the complainant and the certified behavioral health professional or applicant.
- D. If the Board grants a request for a review or rehearing, the new hearing shall address only the question or questions with respect to which the decision is found from erroneous, if separable.
- E. A party may make application for judicial review of the final order issued by the Board in accordance with A.R.S. § 12-901 et seq.
- F. If the Board makes a specific finding in a particular order that the immediate effectiveness of the order is necessary to preserve the public health, safety, or welfare, and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues a decision as a final decision without an opportunity for a review or rehearing, the certified behavioral health professional or applicant may make an application for judicial review of the decision in accordance with A.R.S. § 12-901 et seq.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

PREAMBLE

1. **Sections Affected** **Rulemaking Action**  
R4-38-104 Amend
2. **The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 32-2904(B)(1)  
Implementing statutes: A.R.S. §§ 32-2951(A)(4) and 32-2914(A)(6)
3. **The effective date of the rules:**  
November 12, 1996
4. **A list of all previous notices appearing in the Register addressing the final rules:**  
**Notice of Rulemaking Docket Opening:**  
2 A.A.R. 829, January 26, 1996  
**Notice of Proposed Rulemaking:**  
2 A.A.R. 1434, April 12, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding this rule:**  
Name: Elaine LeTarte, Executive Director  
Address: Board of Homeopathic Medical Examiners  
1400 West Washington, Room 230  
Phoenix, Arizona 85007  
Telephone: (602) 542-3095  
Fax: (602) 542-3093
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
In 1994 the Legislature enacted A.R.S. § 32-2951, authorizing the Board to regulate the optional service of dispensing substances and devices from a licensee's office. The original fees are not sufficient to allow the Board to conduct the mandated inspections of these offices, nor to conduct any related investigations that may be warranted to protect the health, safety, and welfare of the public. In 1996, the Legislature enacted A.R.S. § 32-2914, authorizing the Board to set fees by vote at its annual hearing. This rule was initiated as a result of legal advice that, notwithstanding A.R.S. § 32-2914, fees are required to be set by rule.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**  
This rule will have no discernible economic impact on small business or consumers.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**  
There were 2 changes between the proposed rules and the final rules: the name of the fee was changed from "registration for dispensing physician" to "dispensing permit" to conform with the language used in A.R.S. § 32-2951(A)(4), and the amounts of the fees were changed from prose to arabic numerals.
10. **A summary of the principal comments and the agency response to them:**  
No comments were received, and therefore no agency response was made.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **Was this rule previously adopted as an emergency rule?**  
No.

14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ARTICLE 1. GENERAL

Section  
R4-38-104. Fees

ARTICLE 1. GENERAL

R4-38-104. Fees  
A. No change.  
B. No change.

- C. This fee for a dispensing permit registration as a dispensing physician is \$200.00 \$45.00 and the with annual renewal for of such a permit registration is \$150.00 \$15.00.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.

NOTICE OF FINAL RULEMAKING

*Editor's Note: The following Notice of Final Rulemaking contains two versions of R18-9-123. The first version is the one on file with the Secretary of State and published in the Administrative Code. The second version is one that the Department of Environmental Quality adopted but, due to exemptions under A.R.S. Title 41, never filed with the Secretary of State. Further explanation of the distinction between these two versions is contained in the agency's Preamble. We are printing both versions in the interest of public information.*

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

PREAMBLE

1. **Sections Affected** **Rulemaking Action**  
R18-9-123 Repeal
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 49-104  
Implementing statute: A.R.S. § 49-203
3. **The effective date of the rules:**  
November 15, 1996
4. **A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening  
1 A.A.R. 955, February 9, 1996  
  
Notice of Proposed Rulemaking  
2 A.A.R. 1019, February 23, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Margaret L. McClelland or Martha L. Seaman  
Address: Department of Environmental Quality  
3033 North Central Avenue  
Phoenix, Arizona 85012-2809  
  
Telephone: (602) 207-2222  
Fax: (602) 207-2251
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The purpose of this rulemaking is to repeal R18-9-123 which establishes aquifer protection permit fees, and R18-9-123.1, which repeals the provision for review of the bill. Simultaneously, the Department proposes, in a companion rulemaking, to adopt A.A.C. R18-14-101 through R18-14-107 and R18-14-201 through R18-14-207, Water Quality Permit and Compliance Fees, a more comprehensive water quality fee rulemaking. The companion rulemaking will contain all water quality permit and compliance rule fees, including those for Aquifer Protection Permits, making R18-9-123 and R18-9-123.1 no longer necessary.

This rulemaking will repeal R18-9-123 and R18-9-123.1, the exempt rulemaking adopted by the Director and effective on April 12, 1992. This rulemaking was exempt from the requirements of A.R.S. Title 41 and was not published by the Office of the Secre-

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**Notices of Final Rulemaking**

tary of State in the Code, but these are the fee rules which are currently effective for the aquifer protection permit program. The April 12, 1992, rules superseded the previous rulemaking, R18-9-123, which appears in the Administrative Code (Supp. 89-3). While the April 12, 1992, rulemaking effectively repealed the September 27, 1989, rule, the September 27, 1989, rulemaking continues to appear in the Code with no indication that it was repealed and superseded by a later, exempt rulemaking. This rulemaking also repeals the September 27, 1989.

- 7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
- 8. **The summary of the economic, small business and consumer impact:**  
The proposed rulemaking repeals the fees for Aquifer Protection Permits. However, since the purpose of this repeal is to relocate the fees in a newly proposed Article (see Notice of Proposed Rulemaking for 18 A.A.C. 14 in this issue of the Register) and will continue to be mandated, there is no economic impact to any entity in the state, including small businesses and consumers.
- 9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
The Governor's Regulatory Review Council returned R18-9-123.01 to ADEQ for further action.
- 10. **A summary of the principal comments and the agency response to them:**  
The Department received no comments.
- 11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
- 12. **Incorporations by reference and their location in the rules:**  
None.
- 13. **Was this rule previously adopted as an emergency rule? If so, please indicate the Register citation:**  
No.
- 14. **The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**WATER POLLUTION CONTROL**

**ARTICLE 1. AQUIFER PROTECTION PERMITS**

**Section**

**R18-9-123. Aquifer Protection Permit Application Fees**

**ARTICLE 1. AQUIFER PROTECTION PERMITS**

**~~R18-9-123. Aquifer Protection Permit Application Fees~~**

**~~A. With each application for an individual Aquifer Protection Permit, the applicant shall remit a fee, payable to the state of Arizona, which is not refundable and which shall be deposited in the state general fund, according to the following schedule, except as otherwise provided in subsections (B), (C), and (D).~~**

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Categories	Fee (In U.S. dollars)
On-Site Sewage Disposal Systems (less than 20,000 gpd)	\$1200
Wastewater Treatment Plants	
Where Influent is Predominantly Sewage	
Surface Impoundment	1400
Discharge to Water of the U.S.	1600
Subsurface Discharge	1400
Recharge and Underground Storage and Recovery without Effluent	2200
Recharge and Underground Storage and Recovery using Effluent	2800
Solid Waste Disposal Facility (Landfills)	2200
Construction Debris landfills	1200
Mines	
Surface Impoundments	1800
Tailings Piles or Ponds	2200
Base Metal Leaching Operations including Collection and Process Ponds	2300
Cyanide Leaching including Collection and Process ponds	1500
In-Situ Leaching	3400
Discharge to Water of U.S.	1900
Drywells	900
Industrial Wastewater Discharges	
Surface Impoundment	2200
Discharge to Water of U.S.	1700
Subsurface Discharge	1900
Other Discharging Facilities	1800

- ~~B. For individual Aquifer Protection Permits which are consolidated pursuant to R18-9-122, and unless the applicant qualifies for the fee provision described in subsection (C), the applicant shall remit a fee which equals the sum of the greatest fee among the facilities, and the fee applicable to each additional facility reduced by 40%.~~
- ~~C. An applicant applying for individual permits for two or more facilities of the same category of facilities that, in addition, are engaged in similar operations, and have discharges of similar~~

- ~~chemical characteristics, and are geographically contiguous is required to remit only that fee applicable to a single such facility.~~
- ~~D. With an application that is a request for modification to an individual Aquifer Protection Permit or for a transfer of an individual Aquifer Protection Permit, the applicant shall remit a fee in the same manner as described in subsection (A), and according to the following schedule:~~

<del>Fee</del>	
<del>Permit modification that constitutes a major modification as described in A.R.S. § 49-201.18</del>	<del>\$(Same as that required under subsection (A))</del>
<del>Permit modification that is described as a minor modification under R18-9-121(D)</del>	<del>0</del>
<del>Permit modification that is neither a major modification nor a minor modification</del>	<del>200</del>
<del>Permit transfer</del>	<del>200</del>

*Editor's Note: The following version is the exempted rulemaking that was not filed with the Secretary of State's Office or published in the Administrative Code.*

**ARTICLE 1. AQUIFER PROTECTION PERMITS**

~~R18-9-123. Aquifer Protection Permit Application Fees~~

**ARTICLE 1. AQUIFER PROTECTION PERMITS**

~~R18-9-123. Aquifer Protection Permit Application Fees~~

- ~~A. With each application for an individual Aquifer Protection Permit under R18-9-107, the applicant shall remit an initial fee~~

~~according to the following schedule, except as otherwise provided in subsections (H), (I), and (J). The fee shall be payable to the state of Arizona, and shall be deposited in the state general fund, or if otherwise required by law, in the Water Quality Assurance Fund, or a fund established specifically for aquifer protection permit fees.~~

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Categories	Initial Fee (In U.S. dollars)	Maximum Fee
<b>Wastewater Treatment Plants</b>		
— On-Site Sewage Disposal Systems (less than 20,000 gpd).....	\$1550	\$3450
<b>Wastewater Treatment Plants Where Influent is Predominantly Sewage</b>		
— Lined Surface Impoundment (Evapotranspiration).....	3300	6500
— Discharge to Water of the U.S.....	4800	7950
— Subsurface Discharge.....	4150	7950
<b>Landfills</b>		
— Municipal solid waste.....	4500	15750
— Construction Debris.....	2850	6950
— Other.....	5100	14600
<b>Mines</b>		
— Tailings Piles or Ponds.....	7150	15400
— Base Metal Leaching Operations with Chemical Process....	4600	10550
— Precious Metals Processing.....	4150	10200
— In-Situ Leaching.....	8950	14600
— Other.....	5900	14400
<b>Drywells.....</b>		
	1350	4250
<b>Industrial Wastewater Discharges</b>		
— Surface Impoundment.....	3650	9900
— Discharge to Water of U.S.....	5050	9700
— Subsurface Discharge.....	4600	10250
Other Discharging Facilities.....	4850	15900

- B.** If the actual cost of processing the application identified in subsection (A) or (J) is less than the initial fee paid, the difference between the actual cost and the amount listed and paid shall be returned to the applicant with a final itemized bill within 30 days of the issuance or denial of the permit. If the actual cost of processing the application is greater than the corresponding amount listed, the department shall send the applicant a final itemized bill for the difference between the initial fee paid and the actual cost of processing the application, except that the final bill shall not exceed the applicable maximum fee in subsection (A) or (J). Such difference shall be paid in full before issuance of the permit.
- C.** The Department shall keep a record of the costs associated with denied applications. If there is an amount not covered by the initial fee and that is not paid, the Department shall add the product of the unpaid hours multiplied by the hourly rate in subsection (G) at the time of denial to the initial fee of a permit applied for under R18-9-107 by the same entity at a later date.
- D.** When determining actual cost under subsection (B), the Department shall use a flat hourly rate for all direct labor hours spent working on the permit. The hourly rate shall be based on an annual sum of the following aquifer protection permit program related costs divided by the director labor hours allocated for aquifer protection permit processing for the same year:
1. Salary and personnel benefit costs of aquifer protection permit program employees directly involved in processing permits.
  2. Salary and personnel benefit costs of aquifer protection

- permit program employees indirectly involved in processing permits, such as supervisory and clerical personnel.
3. Department overhead and other operating expenses attributable to all aquifer protection permit program employees.
  4. Per diem expenses.
  5. Transportation costs.
  6. Reproduction costs.
  7. Laboratory analysis charges.
  8. Public notice advertising and mailing costs.
  9. Presiding officer expenses.
  10. Court reporter expenses.
  11. Facility rentals.
  12. Other reasonable, direct, permit-related expenses documented in writing by the Department.
- E.** Direct labor hours spent working on the permit shall consist of time spent by aquifer protection permit program technical staff or consultants on tasks specifically related to processing, issuance, or denial of a particular permit, including time at a facility inspecting the facility, time at a public hearing, or time at a preapplication conference held pursuant to R18-9-107(D).
- F.** Direct labor hours shall not include any of the following:
1. Training.
  2. Travel to or from any facility or permit hearing.
  3. Time by clerical or supervisory staff, unless the supervisory staff is filling in for a particular technical staff member in that person's absence.

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- G.** From the effective date of this subsection, the flat hourly rate shall be \$31.84 per hour. The Director shall annually publish the fee schedules under subsections (A) and (I) and the flat hourly rate under this subsection which will be applicable for the following 12 months. The fee schedules and hourly rate shall be based on the Department's costs for the previous full fiscal year.
- H.** For individual Aquifer Protection Permits which are consolidated pursuant to R18-9-122, and unless the applicant qualifies for the fee provision described in subsection (I), the applicant shall remit an initial fee which equals the sum of the greatest initial fee among the facilities, and the initial fee applicable to each additional facility reduced by 40 percent. The maximum fee to the applicant for consolidated permits shall be equal to the greatest maximum fee among the facili-

ties, plus the maximum fee applicable to each additional facility reduced by 40 percent.

- I.** For purposes of subsection (A), an applicant applying for individual permits for two or more facilities of the same category of facilities that, in addition, are engaged in similar operations, and have discharges of similar chemical characteristics, and are geographically contiguous, is required to remit only the initial fee, and shall be charged no more than the maximum fee, applicable to a single such facility.
- J.** With an application that is a request for modification to an individual Aquifer Protection Permit or for a transfer of an individual Aquifer Protection Permit, the applicant shall remit an initial fee in the same manner as described in subsection (A), and according to the following schedule:

Categories	Initial Fee (In U.S. dollars)	Maximum Fee
Permit modification as described in R18-9-121(C) (1) or (2) or that results from a major modification to a facility as described in A.R.S. §49-201.8	1000	(Same as that allowed under subsection A)
Permit modification that is described as a minor modification under R18-9-121(D)	0	100
Any other permit modification including those described in R18-9-121(D)	300	1000
Permit transfer	300	500

- K.** This rule is effective April 12, 1992. Persons who have submitted complete applications for permits, modifications or transfers before the effective date of this rule shall be required to remit only the permit application fee that was in effect when the application was submitted. Persons who have submitted applications before the effective date of this rule shall be sub-

ject to an initial fee equal to the permit fee for the appropriate category at the time of submission. The final itemized bill for an application that is incomplete on the effective date of this rule shall include only direct labor hours incurred after the effective date of this rule.

**Fee**

Permit modification that constitutes a major modification as described in A.R.S. §49-201.18

\$ (Same as that under subsection (A))

Permit modification that is described as a minor modification under R18-9-12(D)

0

Permit modification that is neither a major modification nor a minor modification

200

Permit Transfer

200

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY  
PERMIT AND COMPLIANCE FEES

PREAMBLE

1. **Sections Affected**

	<u>Rulemaking Action</u>
Article 1	New Article
R18-14-101	New Section
R18-14-102	New Section
R18-14-103	New Section
R18-14-104	New Section
R18-14-105	New Section
R18-14-106	New Section
R18-14-107	New Section
R18-14-108	New Section
  
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 49-104(B)(13)(c), 49-104(C), 49-203(A)(7), 49-209(A), 49-241(G), 49-241.02, 49-242, 49-332(A), 49-353(A)(2)(b), and 49-362(A)(7).

Implementing statutes: A.R.S. §§ 49-104, 49-203, 49-241, 49-242, 49-332, 49-353, and 49-362.
  
3. **The effective date of the rules:**

November 15, 1996
  
4. **A list of all previous notices appearing in the Register addressing the final rule:**

**Notice of Rulemaking Docket Opening**  
1 A.A.R. 2339, November 13, 1995

**Notice of Proposed Rulemaking**  
2 A.A.R. 1022, February 23, 1996
  
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Margaret L. McClelland or Martha L. Seaman

Address: Department of Environmental Quality  
3033 North Central Avenue  
Phoenix, Arizona 85012-2809

Telephone: (602) 207-2222

Fax: (602) 207-2251
  
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The purpose of this proposed rulemaking is to establish comprehensive fees for wastewater and aquifer protection permit regulatory programs administered by the Department of Environmental Quality (hereafter "ADEQ"). These fees will be used to support the construction review, permitting, and compliance services performed by ADEQ personnel and ensure that those services are carried out in a timely, professional manner.

A. **Background for These Proposed Rules**

ADEQ is responsible for conducting construction reviews, issuing permits and routinely inspecting over 8,000 water and wastewater facilities throughout the state. Historically, the funding for these activities has come from either the general fund or the Water Quality Assurance Revolving Fund (WQARF).

In its recent sessions, the Arizona Legislature has enacted numerous user fee requirements for the professional services of ADEQ. The legislative intent of these fees is to transfer the cost of these environmental services away from the general taxpayers to those individuals, municipalities, companies and corporations which require environmental permits and plan reviews in order to construct or operate their facilities.

State law currently authorizes ADEQ to assess and collect fees for a variety of services which are designed to control or eliminate potential threats to public health and the environment. To date, the only fees which ADEQ has established for its water programs are those associated with the Aquifer Protection Program (hereafter "APP") (see A.A.C. R18-9-123, effective April 12, 1992).

This proposed rulemaking implements statutorily mandated requirements for assessing and collecting fees for surface water

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activities, as well as revises the existing APP fees. The proposed rules also consolidate all water quality fee rules into 1 Chapter, making it much easier for the regulated community to find the fee rules to which they are subject.

In order to ensure that the proposed fees are fair, equitable, and reflect the actual cost of delivering its professional services, ADEQ contracted with Arthur Andersen and Company, an independent contractor, to study ADEQ's permitting, plan review and compliance processes. The study determined the costs ADEQ incurs in providing these services. The study, which projected out these costs through Fiscal Year 2001, was completed in April 1995, and is available for public review. Persons interested in reviewing the study may do so by contacting Patricia Nowack, in the Budget Unit of the Office of Fiscal Services. The assumptions and conclusions of this study form the basis for today's proposal. However, these basic assumptions are also discussed below.

ADEQ also has filed a separate Notice of Final Rulemaking for a companion rulemaking which repeals R18-9-123, Aquifer Protection Permit Application Fees. The subject matters of that rule is now contained within this rulemaking.

**B. Specific Section-by-Section Explanation of this Proposal**

The Section-by-Section explanation of these rules is organized as follows:

1. Fee Services
2. Hourly Rates
3. Initial Fees
4. Maximum Fees
5. Fee Assessment and Collection
6. Reconsideration of the Bill; Appeal Process
7. Effect on County Fees
8. Review of Fees

**1. Fee Services**

The final rules cover fees for wastewater services provided to the public.

The ADEQ review ensures that project designs are consistent with state standards and ensure the integrity and safety of the project. A facility which is used to collect, treat, and dispose of domestic wastewater or sewage must undergo such scrutiny. The ADEQ plan review also involves an inspection by ADEQ of the site where the facility or activity is to be located to ensure its suitability.

For many practical reasons, contractors frequently modify construction projects in order to address unforeseen circumstances at the site. To ensure these modifications do not jeopardize public health or the environment, ADEQ also reviews the "as built" construction before a project may be operated or used. As built construction is evaluated by reviewing another set of plans and drawings which depict changes or modifications from the original approved plans and drawings, and an inspection of the facility as constructed.

In addition, there are a number of permits and certifications which an owner or operator may need to obtain prior to operating a facility. These permits include aquifer protection permits (APP) which authorize a discharge to groundwater and reuse permits, which authorize the reuse of effluent from wastewater treatment facilities.

Finally, ADEQ has an ongoing duty to ensure that wastewater facilities are operated in compliance with all applicable standards and requirements. To fulfill this responsibility, ADEQ conducts routine visits to these facilities, many of which are located in remote parts of the state. The legislature, in A.R.S. §§ 49-104(C), 49-203(A)(7), and 49-362(A)(7) authorized ADEQ to charge inspected facilities reasonable fees for these site visits.

Historically, the demand for ADEQ's professional services has been reasonable. In the past, ADEQ, has been able to provide sufficient resources to undertake construction plan reviews, issuance of permits and compliance inspections for water programs. However, the state-wide demand for these services, particularly wastewater services, has exploded in recent years. ADEQ's budget can no longer match the ever-increasing requests for services. Moreover, both ADEQ and the Legislature have recognized for some time that the direct benefits of ADEQ's activities primarily accrue to individuals who own or operate wastewater facilities.

Consequently, the state is moving to a fee-for-services approach to augment ADEQ's general fund budget established each year by the Legislature. Basically, the concept requires that those who benefit most from ADEQ's professional services, and who desire timely action on the part of ADEQ, should pay the actual cost of providing those services.

R18-14-102 lists the ADEQ services for which fees will be charged.

**2. Hourly Rates**

Fees for ADEQ services will be charged at an hourly rate of \$49, based on results from the study by Arthur Andersen and Company.

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Note that the fees for processing dry well registrations and significant industrial user registrations are flat fees and are not calculated on an hourly rate. In the case of dry well registrations, the \$10 fee is established by statute at A.R.S. § 49-332(A). Similarly, the \$250 significant industrial user registration fee is established by A.R.S. § 49-209.

To determine the actual fee for a particular ADEQ service, the hourly rate is multiplied by the number of hours used to complete the service. The actual amount billed will depend on the amount of time needed to complete the service. The amount of time needed is directly related to complexity of the project or facility.

A flat rate, or even a matrix of fees was considered for use beyond those fees established by statute. However, ADEQ believes that fees based on an hourly rate will result in the most accurate calculation of actual costs for each project.

ADEQ is aware of the need for some certainty on the part of the regulated community regarding the maximum that ADEQ service might cost. Therefore, the maximum cost for various services is capped at 1% of gross revenues for wastewater systems with gross incomes of less than \$300,000. This cap is used for planning purposes.

The hourly rate is based on the actual costs incurred by ADEQ in performing a particular service. The hourly rate reflects the costs such as supplies, equipment, photocopying, compliance sampling conducted during inspections and subsequent laboratory analysis. The hourly rate also reflects the average ADEQ professional salary of those employees performing these functions.

The hourly rate has been calculated in the following manner. A standard work year consists of 2,088 hours. Hours were classified into non-billable administrative, non-billable programmatic and billable programmatic. Annual hourly rates were calculated based upon salary, estimated billable hours, operating and equipment costs, and section/unit and administrative allocations.

Hourly rates were calculated based on average salaries for each group of employees. Unit managers and unit administrative costs are allocated based on unit staffing ratios. Section overhead is allocated to all technical employees in the section. All overhead and administrative costs are allocated on a prorated basis between billable and non-billable.

Section overhead includes all section personnel not directly assigned to a specific unit. The costs associated with these personnel are allocated to the technical employees on a straight line basis by dividing the "total section overhead" by the number of section employees. However, the hourly rate does not reflect employee benefits or overhead. These costs will continue to be borne by the state.

Finally, ADEQ reserves the right to waive fees associated with determinations of applicability under the APP Program if the determination is that the APP program does not apply to the activity or facility.

**3. Initial Fees**

In order to ensure that ADEQ is compensated for its services and that requests for assistance are not frivolous, R18-14-103 provides that all applications for construction and permit reviews be accompanied by a reasonable initial fee.

The initial fees for the water quality protection services are set forth in two tables identified as Schedule A and Schedule B. Schedule A lists the initial fees to accompany permits and determinations of applicability. The permit fees are divided by type of facility because certain types of facilities are more resource-intensive than others. The schedule also differentiates between a new permit and a modification to an existing permit in order to reflect the less expensive actual costs of modifications.

Note also the rule does not provide for the forty percent initial fee discount currently available for multiple applications for aquifer protection permits.

Schedule B lists the initial fees for services other than permit issuance. There will be no initial fees for clean closure plans or compliance inspections. Fees for these services will be billed at the time that ADEQ completes its review of the closure plan, and transmits the inspection report to the owner or operator.

ADEQ expects that most projects will cost more than the initial fee. However, R18-14-103(C) allows ADEQ to establish a lower initial fee for water quality protection services where the final fee is likely to be less than seventy percent of the otherwise applicable initial fee.

After the effective date of these rules, ADEQ will not process a new construction or permitting application until the initial fee is paid in full. Applications submitted to ADEQ prior to the effective date will not be subject to the fees in these rules. The initial fee will be credited towards the total fee to be charged at the conclusion of the ADEQ service. In the event the actual cost is less than the initial fee, ADEQ will refund any remaining balance.

**4. Maximum Fees**

ADEQ is aware that a cap on the total cost for its professional services is appropriate. These maximum fees are set out in section R18-14-104. As with the initial fees, we have designated maximum fees by facility type and the nature of the services being conducted by ADEQ. Note that the fees associated with aquifer protection permits are capped at levels prescribed by A.R.S. § 49-241.02.

**5. Fee Assessment and Collection**

Upon adoption of these final rules, these fees will be applicable to any of the professional services listed in R18-14-102.

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However, inspection fees will not be assessed where the site visit occurred prior to the effective date of these rules. Similarly, other services performed prior to the effective date will not be subject to these fees, with the exception of aquifer protection permits.

Up to the effective date of these rules, ADEQ will continue to charge fees for aquifer protection permits based on the existing hourly rate and maximum fees set out in A.A.C. R18-9-123. A.A.C. R18-9-123 and R18-9-123.1 will be superseded by the requirements in R18-14-101 through R18-14-108, upon effectiveness. In addition, after the effective date of these rules, ADEQ will not begin to review a new construction plan or permit application until the initial fee is paid in full. Similarly, after completing its review, ADEQ will not issue a permit or approval (or project denial) until the fee is paid. Construction projects and permits already in progress need not submit either this initial fee or any additional fees identified in these rules.

For billing purposes, where the actual cost of the service exceeds the initial fee, ADEQ will send a final itemized bill for the outstanding balance to the owner or operator. Upon full payment of the bill, ADEQ will issue a permit or approval (or a project denial) on the proposed project. Similarly, once a compliance inspection is completed (i.e., after the report is transmitted to the facility owner or operator), ADEQ will prepare a bill for the inspection which shall be sent to the owner or operator. This bill shall be paid within 30 days from the date of mailing the bill.

Fees shall be paid by a purchase order, county check, city check, company check, certified check or money order made payable to ADEQ. Fee monies will be deposited as otherwise authorized by law. ADEQ may collect unpaid bills in a similar manner to other obligations owed to it. Past due payments may be subject to an interest rate charged in accordance with ADEQ policy and Arizona law. In addition, ADEQ shall not review or otherwise process any construction plan or permit application for any facility, site or project owned by a person who has not paid all fees in full.

Pursuant to A.R.S. § 49-112(B), counties administering the environmental and public health programs described by these rules may adopt similar fees under local law. Alternatively, counties with approved program delegations may charge fees in accordance with these rules as if ADEQ personnel were performing the professional service itself. In such cases, ADEQ will not levy a 2nd fee for the work performed by county personnel.

6. Reconsideration of the Bill; Appeal Process

Persons wishing to dispute the amount of an actual fee may do so by petitioning the Director within thirty days of the finalized bills. The hourly rate cannot be appealed. The Director's decision constitutes final agency action for purposes of further judicial review.

7. Effect on County Fees

A county or local government implementing delegated water quality protection programs may continue to charge fees based on statutory authorization.

8. Review of Fees

By no later than the end of fiscal year 1999, ADEQ will complete a review of the fees to determine if the fees should be higher or lower. ADEQ is required to commence a rulemaking accordingly, if necessary. The public will be given an opportunity to participate in the review and ADEQ will issue a written report on the review.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business and consumer impact:**

Historically, ADEQ has issue wastewater construction approvals and operating permits, and conducted compliance inspections at no cost to the regulated entities. With the exception of Aquifer Protection Permits (APP's) issued since 1989, ADEQ provided services free of charge to regulated entities and owners/operators wastewater facilities.

This rule proposes to shift a substantial portion of the financial responsibility for these services away from State taxpayers (since the State General Fund is supported by taxpayers), and to those individuals and entities who will benefit directly from these services. It is likely that most, if not all, regulated entities will ultimately pass on these costs to their customers or the tax paying residents of their jurisdictions. For entities that are regulated by the Arizona Corporation Commission (ACC), the process of cost-shifting may take a longer time frame if, for any reason, they cannot readily obtain Commission approval.

The fees were arrived at through a Workload Analysis and Rate Determination Study conducted by Arthur Andersen and Co. and completed in April, 1995. The rule establishes a fixed hourly rate of \$49 for wastewater fees (except flat fees). The actual fee to be paid will be dictated by the number of hours it takes ADEQ staff to complete reviewing and processing construction plans, permits, inspections and approvals.

Promulgated under a Legislative mandate (A.R.S. §§ 49-104(C), 49-203(A)(7), 49-362(A)(7)), the rule enables ADEQ to recover its costs by shifting much of the burden to the beneficiaries of these services. Those who benefit directly from a regulatory process or program will now pay for it. ADEQ considers this to be more rational, from an economic standpoint; thus, an overall benefit is gained by the promotion of the principle of fairness and equity.

Therefore, ADEQ believes that the benefits of this rule outweigh its costs.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The adopted rules were originally discussed at the September 10, 1996, meeting of the Governor's Regulatory Review Council (GRRRC). At the meeting, GRRRC heard testimony from members of the regulated community who expressed a desire to work with the Department to develop a consensus on various issues and concerns regarding the rules. After an indication from GRRRC that ADEQ should continue to work with the regulated community to resolve outstanding issues, ADEQ requested that GRRRC table action on the rules until the October 1, 1996, meeting to allow the Department an opportunity to meet with the regulated community to work out issues.

ADEQ held several meetings with members of the regulated community. However, because more time was necessary, ADEQ requested at the October 1, 1996, GRRRC meeting that action on the rules again be tabled until the November 5, 1996, meeting. Additional meetings and teleconferences were held with the regulated community and resolution was reached on some outstanding issues.

The text which follows indicates all changes made to the text since proposal, including changes made in response to public comment during oral proceedings, and changes made as a result of dialogue with the regulated community during the time that the rules were tabled by GRRRC.

Text which is neither stricken, underlined nor capitalized indicates text which was proposed and remains unchanged in the final rule. Text which has been stricken indicates proposed language which does not appear in the final rule as a result of preadoption public comments or comments of the GRRRC staff. Text which is underlined indicates text which did not appear in the proposed rule, but is new text in the final rule as a result of pre-adoption public comments. Text which is in ALL CAPS indicates text which is added as a result of dialogue with the regulated community while the rules were tabled by GRRRC. Text which is stricken and in italics indicates text which is deleted as a result of dialogue with the regulated community while the rules were tabled by GRRRC.

As a result of comments received from the regulated community at the September 10, 1996, GRRRC meeting, and at the Administrative Rules Oversight Committee meeting, fees for drinking water facilities and 401 certifications have been deleted. The Department will work with the regulated community if rules are established for those services in the future.

**ARTICLE 1. DRINKING WATER PROGRAM SERVICE FEES**

**R18-14-101. Definitions**

In addition to the definitions prescribed in A.R.S. §§ 49-101 and 49-201, the terms in of this Article shall have the following meanings:

1. ~~"ADEQ" means the Arizona Department of Environmental Quality.~~
2. ~~"Approval of construction" means an ADEQ approval to operate a constructed drinking water treatment or storage facility or a distribution system, issued pursuant to A.A.C. R18-4-507.~~
3. ~~"Approval to construct" means an ADEQ approval to construct a proposed drinking water treatment or storage facility or a distribution system, issued pursuant to A.A.C. R18-4-505.~~
- 4.2. ~~"Approved" or "approval" means written approval from ADEQ.~~
- 5.3. ~~"Director" means the Director of the Arizona Department of Environmental Quality, or the director's his designee.~~
4. ~~"Drinking water plan documents" means design proposals, modifications, line extension, and preliminary plans. The term also includes survey data, topographic data, engineering design reports or other basis of design data general and detailed construction plans and specifications, profiles, plat maps, applications, time extension, and treatment methods and devices (including devices for sale in the State of Arizona), distribution, and other information pertaining to the design of the project.~~
6. ~~"Owner or operator" means a person with a vested interest in real or personal property, or an authorized representative or agent of that person.~~
7. ~~"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, counties, towns, cities, other state, a political subdivision of Arizona the state, or commission, or the United States government, or a federal facility, interstate body, or other entity.~~
- 8.9. ~~"Related costs" means ADEQ expenditures for supplies, equipment, analysis, photocopying, transportation costs, and per diem.~~
9. ~~"Request" means a written application, letter, or memorandum submitted by the owner or operator to ADEQ for a proposed approval to construct, or proposed approval of construction, or time extension. A request is made at the time it is received at ADEQ.~~
10. ~~"Time extension extensions" means a an written extension of the expiration date for an existing construction approval issued by ADEQ.~~

**R18-14-102. Fee Services**

ADEQ shall assess and collect fees for the following drinking water services:

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1. ~~Review and approval of drinking water plan documents, including of a request for approval to construct, approval of construction or time extension and any site visits necessary to issue or deny an approval.~~
2. ~~Any site visit conducted as part of the review of a request.~~
2. Compliance inspection at a regulated facility.

**R18-14-103. Hourly Rates and Initial Fees**

- A. ~~The fees for the services described in R18-14-102, shall be calculated using an hourly rate of \$49.00, multiplied by the number of hours used to review each request.~~
- B. ~~ADEQ shall not charge the owner or operator a fee for an initial meeting to consult with ADEQ personnel prior to submitting a request to ADEQ.~~
- C. ~~ADEQ shall not bill an owner or operator for more than two hours of travel time each way, per round trip, for a site visit made as part of a request.~~
- DB. ~~The initial fee for the review of a request a drinking water plan document shall be is \$100.~~
- C. The initial fee a time extension of a drinking water plan review shall be \$100.

**R18-14-104. Maximum Fees**

- A. The maximum fee charged for drinking water services shall not exceed the following amounts:
  1. \$9,850.00 for the review of a request for approval to construct or approval of construction a single drinking water plan document; ~~or~~
  2. \$1,970.00 for a time extension request, for existing construction approvals issued by ADEQ.
  3. \$3,200.00 for a compliance inspection.

**R18-14-105. Fee Assessment and Collection**

- A. In the case of a compliance inspection, the fee shall be paid within 30 days of receiving a bill from ADEQ. The bill shall reference the date the final inspection report was transmitted to the owner or operator of the inspected facility.
- ~~A.B. The initial fee for the review of a request shall be paid at the time the request is submitted to ADEQ. At the time of submission of drinking water plan documents or extensions for review and approval, an owner shall submit an initial fee of \$100 dollars.~~
- ~~B.C. ADEQ shall not review process any drinking water plan document a request until the initial fee is paid in full to ADEQ.~~
- ~~C.D. After completion of its review of a request the drinking water plan documents, but prior to issuance or denial of an any approval requested, ADEQ shall prepare a final itemized bill, which shall contain:~~
  1. ~~The total number of hours of the review; and~~
  2. ~~The dates and number of hours of travel done as part of the review.~~
  3. ~~The total amount of fees due.~~
- D. ~~The amount of the final itemized bill shall equal the \$49 hourly rate multiplied by the number of hours of review, less the initial fee. The final itemized bill shall not exceed the maximum fees allowed under R18-14-104.~~
  1. If the actual cost of services exceeds the initial fee, ADEQ shall bill the owner for the actual cost of the services up to the maximum allowed under R18-14-104.
- E.2. ~~ADEQ shall not issue review or process an approval to construct, approval of construction, any subsequent drinking water plan, or time extension provide any other water quality protection service other than a compliance inspection, for an owner or operator until all outstanding billed fees are paid in full.~~
- E.E. ~~All The owner or operator shall pay service fees billed either by shall be paid by county check, purchase order, city check, company check, certified check, or money order, which is made payable to ADEQ.~~

**R18-14-106. Appeal Process**

- A. ~~An owner or operator may who wishes to appeal, to the Director, the number of hours contained on the final itemized bill by filing on and cost of a final bill shall file a written request for reconsideration with the Director. The request shall specify, in detail, the matter or matters why the number of hours billed is in dispute and shall include any documentation indicating that an error has been made. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile submitted to ADEQ within 30 10 working days of the date of the final itemized bill, receipt of the final bill.~~
- B. ~~The Director shall make a final decision as to whether the number of hours and costs billed is are correct, and mail a final written decision shall be mailed to the owner or operator within 10 working days after receiving the date of receipt by the Director of the written request for reconsideration. All final decisions of the Director are subject to appeal pursuant to A.R.S.~~

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~~§ 12-901 et seq.~~

~~C. A final decision of the Director is subject to appeal pursuant to A.R.S. § 12-901 et seq.~~

~~R18-14-107. Effect on County Fees~~

~~A county or other local government implementing delegated ADEQ drinking water or water quality protection programs pursuant to A.R.S. § 49-107, may charge fees under the authority of either A.R.S. § 49-112, A.R.S. § 11-251.08, or A.R.S. § 36-187(C).~~

**ARTICLE 2.1. WATER QUALITY PROTECTION FEES**

**R18-14-101. R18-14-201. Definitions**

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, 49-241.02, 49-331, and 49-362(H), the terms in of this Article shall have the following meanings:

1. "ADEQ" means the Department of Environmental Quality.
2. "ANNUAL INSPECTION" MEANS AN ANNUAL INSPECTION OF SEWAGE DISPOSAL FOR A SUBDIVISION PURSUANT TO A.R.S. § 49-104(B)(11), AN ANNUAL INSPECTION OF A SEWAGE COLLECTION, TREATMENT, DISPOSAL OR RECLAMATION SYSTEM PURSUANT TO A.R.S. § 49-104(B)(13) OR A MANDATORY ANNUAL ROUTINE OPERATION AND MAINTENANCE INSPECTION OF AN ON-SITE WASTEWATER TREATMENT FACILITY PURSUANT TO A.R.S. § 49-362(A)(5).
3. "Approval of construction" means an ADEQ approval to operate a constructed wastewater collection, treatment, storage, or disposal facility, or sewer line extensions or line replacements, issued pursuant to A.A.C. R18-9-805.
4. "Approval to construct" means an ADEQ approval to construct a proposed wastewater collection, treatment, storage, or disposal facility, or sewer line extensions or line replacements, issued pursuant to A.A.C. R18-9-804.
- 2-5. "Approved" or "approval" means written approval from ADEQ.
- 3-6. "Aquifer protection permit" means an individual, area wide, or general permit issued pursuant to A.R.S. §§ 49-203 or and 49-241 through 251, or and 18 A.A.C. 9, Article 9. For purposes of this Article, "aquifer protection permits" include including denied permit applications.
- 4-7. "Clean water act" means the Federal Clean Water Act, previously known as the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended.
- 6-11. "Compliance inspection" means a routine site visit by ADEQ to a regulated facility or activity conducted for the purposes of determining compliance with Arizona water pollution laws and rules, as well as any permits or orders issued under those rules and laws. A compliance inspection includes sampling and analyzing the quality of wastewater collected, treated, or disposed at the visited site. A compliance inspection also includes drafting a report containing findings and observations made during the site visit. A compliance inspection does not include ADEQ review or computer entry of self-monitoring data.
7. "Conventional septic tank" means a septic tank system with a capacity of greater than two thousand gallons per day.
5. "Dredge and fill permit" means a permit issued by the United States Army Corps of Engineers for discharge of pollutants for the purposes of filling or dredging a waters of the United States, including wetlands, as required by 33 U.S.C. 1344 (404) of the Clean Water Act. For purposes of this Article, dredge and fill permits include denied permit applications.
5. "Dry well" has the meaning ascribed to it in A.R.S. § 49-331(3).
7. "Fiscal year" means the twelve month period which begins on July 1 and is dated for the next calendar year and ends on the following June 30.
8. "gpd" means gallons per day.
9. "Major modification" means a any revision to an issued aquifer protection permit under A.R.S. § 49-201(19). 49-201-18.
10. "NPDES permit" means a National Pollutant Discharge Elimination System permit ~~which is drafted, reviewed, certified, or~~ issued by ADEQ PURSUANT TO DELEGATED AUTHORITY FROM the United States Environmental Protection Agency for a point source discharge of pollutants into waters of the United States, as required by 33 U.S.C. 1342 (402) of the Clean Water Act. For purposes of this Article, an NPDES permit includes a denied permit application for an NPDES permit.
11. "On-site wastewater treatment plant" means all of the processes, devices, structures, and earthworks used for treating wastewater for disposal and reuse except septic tanks with a hydraulic capacity of less than 2,000 gallons per day and which possesses an N.S.F. Class I rating.
- 12-11. "Other modification modifications" means a revision to an issued aquifer protection permit that is not a major modification, and includes a minor modification as defined in R18-9-121(D).
- 13-12. "Owner or operator" means a person with a vested interest in real or personal property, or an authorized representative or agent of that person.

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- ~~13.14.~~ "Permitted facility" means any facility holding a valid aquifer protection permit, reuse permit, NPDES permit, or ~~section 404 dredge and fill permit.~~
15. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, counties, towns, cities, other political subdivisions of the state, the United States government, or a federal facility, interstate body or other entity.
16. "Plan documents" means reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications, time extensions and all other information pertaining to the project.
13. "Regulated facility" means an enterprise, business, or activity which is subject to the requirements of A.R.S. Title 49, Chapter 2, Water Quality Control.
- ~~17.14.~~ "Related costs" means ADEQ expenditures for supplies, equipment, analysis, photocopying, transportation, and per diem.
15. "Request" means a written application, letter, or memorandum submitted by the owner or operator to ADEQ for water quality protection services. A request is made at the time it is received at ADEQ.
- ~~18.16.~~ "Reuse permit" means a permit issued by ADEQ for wastewater effluent reuse by ADEQ pursuant to A.A.C. R18-9-702(C). For purposes of this Article, A reuse permit permits include a denied permit applications application for a reuse permit.
18. "Section 401 certification" means the ADEQ review and certification of a draft NPDES section 404 permit.
- ~~19.~~ "Section 404 permit" means a draft permit issued by the United States Army Corps of Engineers for discharge of pollutants for the purposes of filling or dredging a waters of the United States, including wetlands, as required by 33 U.S.C. 1344 (404) of the Clean Water Act. A section 404 permit includes a denied section 404 permit application.
- ~~19.17.~~ "Significant Industrial Users" means the same as in 40 CFR 403.3(t).
- ~~19.18.~~ "SITE VISIT" MEANS AN INSPECTION CONDUCTED PRIOR TO ISSUANCE OF AN APPROVAL OF CONSTRUCTION OR APPROVAL TO CONSTRUCT.
- ~~20.19.~~ "Time extension" means a written an extension of the expiration date for an existing construction approval issued by ADEQ.
- ~~21.20.~~ "U.S. EPA" means the United States Environmental Protection Agency.
- ~~22.21.~~ "Wastewater treatment facility" means any all of the processes, devices, structures, pipes, equipment, and earth-works which are used for collecting, treating, and disposing of domestic wastewater, including reusing the treated wastewater, for disposal and reuse, Wastewater treatment facility but does not include conventional septic tanks or industrial, agricultural, or similar systems or facilities for the collection, distribution, treatment, reuse, or disposal of wastewater or if the water or wastewater is used or reused for nonpotable purposes, septic tanks, or wastewater treatment plants serving single-family residences, industrial unit processes, or industrial impoundments for process waters within the industrial property.
- ~~22.~~ "Water quality protection service" means reviewing a request for a determination of applicability; ~~drafting, reviewing, certifying, issuing, modifying, transferring or denying an aquifer protection permit, reuse permit, OR NPDES permit or section 404 permit or other federal permit;~~ performing a clean closure plan review; registering a dry well; reviewing an "approval to construct", "approval of construction", or a time extension request, ~~including CONDUCTING A site VISIT visits;~~ registering significant industrial users; or conducting a ~~compliance AN ANNUAL~~ inspection.

~~R18-14-202. R18-14-102.~~ Fee Services

- A. ADEQ shall assess and collect fees for the following water quality protection services, including any site visits:
1. Groundwater Protection Services:
    - a. Processing a request for a determination of applicability.
    - b. Drafting, issuing, transferring or denying an aquifer protection or reuse permit.
    - c. Inspecting or sampling a permitted facility, a facility with a pending permit application or an unpermitted facility for which a complete permit application has not been received at the time of the inspection.
    - d. Registering a dry well.
  - ~~B. In no case shall a fee be charged for more than one compliance inspection per facility, per calendar year.~~
  - B. ADEQ shall not charge a fee for the first 30 minutes of technical assistance provided during an ~~a~~ ANNUAL INSPECTION OR SITE VISIT.
    - ~~2.~~ Surface Water Protection Services:

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- a. ~~Review, approval or disapproval of wastewater treatment facility plan documents, including "Approvals to Construct", "Approvals of Construction", time extensions, and any site visit necessary to issue these approvals or extensions;~~
- b. ~~Certifying a draft NPDES permit prepared by U.S. EPA, or a draft Dredge and Fill permit prepared by the U.S. Army Corps of Engineers pursuant to section 401 of the Clean Water Act.~~
- c. ~~Drafting and/or issuing an NPDES or Dredge and Fill Permit.~~
- d. ~~Registering significant industrial users permitted to discharge into community sewage systems.~~
- e. ~~Inspecting or sampling a permitted facility, a facility with a pending permit application or an unpermitted facility for which a complete permit application has not been received at the time of the inspection.~~

**R18-14-203, R18-14-103 Hourly Rates and Initial Fees**

- A. ~~Except as set forth in subsection (B), the fee for any service described in section A.C.C. R18-14-202 shall be calculated using an hourly rate of \$49.00, multiplied by the number of hours REASONABLY REQUIRED to provide a water quality protection service.~~
  - 1. ~~ADEQ shall not charge the owner or operator a fee for an initial meeting to consult with ADEQ personnel prior to submitting a request for water quality protection services.~~
  - 2. ~~ADEQ shall not bill an owner or operator for more than two hours of travel time each way per round trip for a site visit made to provide a water quality protection service, including compliance inspections.~~
- B. The following flat fees are established for the identified ADEQ services:
  - 1. The fee for processing a dry well registration shall be \$10.00 per dry well.
  - 2. The fee for processing a significant industrial user registration shall be \$250.00 per year.
  - 3. The fee for providing water quality certification of a nationwide dredge and fill permit shall be \$200.00.
- C. ~~The initial fees for all ADEQ water quality protection services, set forth in Schedules A or B, shall be paid at the time the request for services is made. At the time of submission to ADEQ for review and approval, the owner or operator shall pay an initial fee as set out in Schedules A and B.~~

~~When more than 1 initial fee is applicable to a request for multiple water quality protection services, or for application for multiple types of discharging facilities, the initial fee owed shall be the sum of all applicable initial fees, not to exceed the applicable maximum fee. The owner or operator shall remit a separate initial fee for each request.~~

**C.D.** Upon request, ADEQ may set an alternative, lower initial fee on a case-by-case basis, when where it is likely that the final fee will not exceed at least seventy (70) percent% of the otherwise applicable initial fee.

- D.** ~~Applicants shall remit a separate initial fee for each individual permit application submitted to ADEQ.~~

**R18-14-204, R18-14-104 Maximum Fees**

ADEQ shall not assess more than the maximum fee for each of the services set out in Schedules C and D.

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**Schedule A**

**INITIAL FEES FOR ADEQ WATER QUALITY PROTECTION PERMITS**

<b>TYPE OF DISCHARGING FACILITY PERMIT<sup>1</sup></b>	<b>New Permit<sup>2</sup></b>	<b>Major Modification</b>	<b>Other Modification</b>
<b>Wastewater Treatment Plant Facilities (With a design greater than or equal to 20,000 gpd) Design</b>			
Lined Surface Impoundments	\$ 1,800	\$1,000	\$ 100
Discharge to Surface Waters	\$ 1,800	\$1,000	\$ 100
Subsurface Discharge	\$ 2,400	\$1,200	\$ 100
<b>Wastewater Treatment Facilities (With a design less than 20,000 gpd)</b>			
Design-Less than 20,000 gpd	\$ 1,200	\$ 600	\$ 100
<b>Industrial Facilities</b>			
Lined Surface Impoundments	\$ 4,500	\$ 2,200	\$ 300
Discharge to Surface Waters	\$ 4,500	\$ 2,200	\$ 300
Subsurface Discharge	\$ 4,500	\$ 2,200	\$ 300
<b>Mine Facilities</b>			
Tailing Piles or Ponds	\$ 6,000	\$ 3,000	\$ 400
Base Metal Leaching Operations	\$ 6,000	\$ 3,000	\$ 400
Discharge to Surface Waters	\$ 4,500	\$ 2,200	\$ 300
Precious Metal Processing	\$ 4,800	\$ 2,400	\$ 400
In-Situ Leaching	\$ 6,000	\$ 3,000	\$ 400
Other	\$ 4,000	\$ 2,000	\$ 400
<b>OTHER PERMITS</b>			
Other Discharging Facilities Facility	\$ 4,000	\$ 2,000	\$ 300
Reuse Permit	\$ 1,400	-	\$ 100

1. FEES PAID PURSUANT TO A.A.C. R18-9-123 FOR PERMIT APPLICATIONS SUBMITTED BUT NOT ACTED UPON AS OF THE EFFECTIVE DATE OF THIS RULE SHALL BE DEEMED TO SATISFY THE INITIAL FEE UNDER THE RULES ~~Permit includes individual aquifer protection permits, NPDES permits and reuse permits.~~

2. Permit includes individual aquifer protection permits, AND WILL INCLUDE NPDES permits ~~and reuse permit~~ IF ADEQ RECEIVES DELEGATION FROM THE UNITED STATES ENVIRONMENTAL PROTECTION SERVICE TO ADMINISTER THE NPDES PROGRAM IN ARIZONA.

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Schedule B

Initial Fees for Water Quality Protection Services Other than Permits

ADEQ SERVICE	INITIAL FEE
<del>Aquifer Protection Permit APP</del>	
<del>Applicability Determination Reviews</del>	<del>\$ 0</del>
<del>Clean Closure Plan Reviews</del>	<del>\$ 0</del>
<del>Construction Approvals and Time Extension Plan- Document Reviews for an On-Site Wastewater Disposal System</del>	<del>\$ 100</del>
<del>On Site Disposal System Construction Plan Reviews (less than 2000 gpd)</del>	<del>\$ 100</del>
<del>Construction Approvals and Time Extension Reviews for Domestic Wastewater Systems, Including Collection Systems (greater than or equal to 2,000 gpd, but less than 20,000 gpd)</del>	<del>\$ 500</del>
<del>Construction Approvals and Time Extension Reviews for Domestic Wastewater Systems, Including Collection Systems (greater than or equal to 20,000 gpd)</del>	<del>\$ 1000</del>
<del>Domestic Wastewater System Construction Plan Reviews (greater than or equal to 2,000 gpd, but less than 20,000 gpd)</del>	<del>\$ 500</del>
<del>Domestic Wastewater System Construction Plan Reviews (greater than or equal to 20,000 gpd)</del>	<del>\$ 1,000</del>
<del>Section 401 Water Quality Certifications for Individual Dredge and Fill Permits Individual Section 404 Permits</del>	<del>\$ 600</del>
<del>Section 401 Water Quality Certifications for NPDES Permits</del>	<del>\$ 600</del>
<del>Section 401 Water Quality Certifications for Other Federal Permits</del>	<del>\$ 200</del>

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Schedule C

Maximum Water Quality Protection Permit Fees

TYPE OF DISCHARGING PERMIT FACILITY	New Permit <sup>a,b,c</sup>	Major Modification <sup>d</sup>	Other Modification <sup>d</sup>	Compliance-Inspection
<b>Wastewater Treatment Facilities (With a design Design greater than or equal to 20,000 gpd)<sup>d</sup></b>				
Lined Surface Impoundments	\$ 16,000	\$ 10,600	\$ 1,500	\$ 3,200
Discharge to Surface Waters	\$ 16,000	\$ 10,600	\$ 1,500	\$ 3,200
Subsurface Discharge	\$ 16,000	\$ 15,300	\$ 2,300	\$ 3,200
<b>Wastewater Treatment Facilities (With a design less Design-Less than 20,000 gpd)</b>				
	\$ 16,000	\$ 8,000	\$ 1,100	\$ 3,200
<b>Industrial Facilities</b>				
Lined Surface Impoundments	\$ 16,000	\$ 16,000	\$ 2,900	\$ 3,200
Discharge to Surface Waters	\$ 16,000	\$ 16,000	\$ 4,000	\$ 3,200
Subsurface Discharge	\$ 16,000	\$ 16,000	\$ 4,000	\$ 3,200
<b>Mine Facilities</b>				
Tailing Piles or Ponds	\$ 16,000	\$ 16,000	\$ 10,000	\$ 4,000
Base Metal Leaching Operations	\$ 16,000	\$ 16,000	\$ 10,000	\$ 4,000
Precious Metal Processing	\$ 16,000	\$ 16,000	\$ 7,200	\$ 4,000
Discharge to Surface Waters	\$ 16,000	\$ 16,000	\$ 8,200	\$ 4,000
In-Situ Leaching	\$ 16,000	\$ 16,000	\$ 8,200	\$ 4,000
<b>OTHER PERMITS</b>				
<b>Other Discharging Facilities Facility</b>	\$ 16,000	\$ 16,000	\$ 4,300	\$ 4,000
<b>Reuse permit</b>	\$ 16,000	-	\$ 2,300	\$ 3,200

a. Permit includes individual aquifer protection permits, and NPDES permits.

b. ~~When more than one aquifer protection permit is needed for activities at a contiguous, individual site, the total fee for these multiple permits shall not exceed \$25,000. The maximum fee for a permit shall not exceed \$16,000.~~ IN ADDITION TO THIS TABLE,

MAXIMUM PAYMENTS FOR AQUIFER PROTECTION PERMIT FEES ARE LIMITED BY A.R.S. § 49-241.02.

c. Where an applicability review determines that an individual ~~or area-wide~~ aquifer protection permit is needed, the fee for the applicability determination will be added to the total permit fee.

d. IN THE CASE OF WASTEWATER SYSTEMS WITH ANNUAL GROSS REVENUES OF \$300,000 OR LESS, THE MAXIMUM FEE CHARGED WILL BE CAPPED AT 1% OF THE GROSS REVENUE.

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**Schedule D**

**Maximum Fees for Water Quality Protection Services Other than Permits**

ADEQ Service	Review Approval to Construct Requests	Review Approval of Construction Requests
Construction Approvals and Time Extension Reviews for an On-Site Wastewater Disposal System	\$ 700	\$ 700
Construction Approvals and Time Extension Reviews for Domestic Wastewater Systems, Including Collection Systems (greater than or equal to 2,000 gpd, but less than 20,000 gpd)	\$ 4,500 <sup>a</sup>	\$ 4,500 <sup>b</sup>
Construction Approvals and Time Extension Reviews for Domestic Wastewater Systems, Including Collection Systems (greater than or equal to 20,000 gpd)	\$ 10,000 <sup>c</sup>	\$ 10,000 <sup>d</sup>

ADEQ Service	<i>Document Review</i> <b>CHARGE</b>
Clean Closure Plan Reviews	\$ 3,000
ANNUAL INSPECTIONS	\$3,200
<del>Section 401 Certifications for Individual Section 404 Permits</del>	<del>\$ 3,040</del>
<del>Section 401 Certifications of NPDES Permits</del>	<del>\$ 5,740</del>
<del>Section 401 Certifications of Other Federal Permits and Actions</del>	<del>\$ 5,740</del>

- a. IN THE CASE OF WASTEWATER SYSTEMS WITH ANNUAL GROSS REVENUES OF \$300,000 OR LESS, THE MAXIMUM FEE CHARGED WILL BE CAPPED AT 1% OF THE GROSS REVENUE.
- b. IN THE CASE OF WASTEWATER SYSTEMS WITH ANNUAL GROSS REVENUES OF \$300,000 OR LESS, THE MAXIMUM FEE CHARGED WILL BE CAPPED AT 1% OF THE GROSS REVENUE.
- c. IN THE CASE OF WASTEWATER SYSTEMS WITH ANNUAL GROSS REVENUES OF \$300,000 OR LESS, THE MAXIMUM FEE CHARGED WILL BE CAPPED AT 1% OF THE GROSS REVENUE.
- d. IN THE CASE OF WASTEWATER SYSTEMS WITH ANNUAL GROSS REVENUES OF \$300,000 OR LESS, THE MAXIMUM FEE CHARGED WILL BE CAPPED AT 1% OF THE GROSS REVENUE.

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Schedule D

**Maximum Fees for Water Quality Protection Services Other than Permits**

ADEQ Service	Construction Approval	Construction Inspections	Compliance Inspections
Clean Closure Plans	\$ 3,000	-	-
On-Site Disposal System Construction Plan Reviews (less than 2000-gpd)	\$ 700	\$ 700	\$ 400
Domestic Wastewater System Construction Plan Reviews (greater than or equal to 2,000-gpd, but less than 20,000-gpd)	\$ 4,500	\$ 4,500	\$ 1,000
Domestic Wastewater System Construction Plan Reviews (greater than or equal to 20,000-gpd)	\$ 10,000	\$ 2,500	\$ 3,200
Water Quality Certifications for Individual Dredge and Fill Permits	\$ 3,040	-	\$ 1,200
Water Quality Certifications of NPDES Permit	\$ 5,740	-	\$ 3,200
Water Quality Certifications of Other Federal Permits	\$ 5,740	-	\$ 3,200

**R18-14-205.R18-14-105.Fee Assessment and Collection**

- A. An owner or operator of a facility or activity at which ADEQ has conducted AN ANNUAL inspection shall pay the final itemized bill within 30 days from the date on which the final inspection report and final itemized bill are mailed to the owner or operator. In the case of a compliance inspection, fees shall be paid within 30 days of receipt of a final itemized bill from ADEQ, which shall accompany the final inspection report.
- B. Except for ANNUAL inspections, ADEQ shall not review any requests for water quality protection services until the appropriate initial fee set forth in Schedule A or B of R18-14-203 is paid in full to ADEQ.
- C. After completion of its review, but prior to notification to the owner or operator of the final action on the request, ADEQ shall prepare a final itemized bill which shall contain:
  - 1. The total number of hours of the review, and
  - 2. The dates and number of hours of travel done as part of the review.
  - 3. The total amount of fees due.
  - 4. A description of each activity performed.
  - 5. The number of hours spent performing each activity.
- D. If the total amount of fees due exceeds the amount of the initial fee, ADEQ shall bill the owner or operator for the cost of the services, less the initial fee, up to the maximum allowed in Schedules C and D under R18-14-204. IF THE TOTAL AMOUNT OF FEES DUE IS LESS THAN THE INITIAL FEE, ADEQ SHALL REFUND THE DIFFERENCE TO THE PERSON WHO PAID THE INITIAL FEE.
- E. ADEQ shall not take final action on a request until the final bill is paid in full.
- E. ADEQ shall not review any subsequent request for water quality protection services for an owner or operator until all past due fees are paid in full.
- B. At the time of submittal by an owner for a construction review and approval, a construction inspection, the certification of a draft Federal Clean Water Act permit, an aquifer protection permit applicability determination, or an aquifer protection permit, the owner shall submit the initial fee set out in Schedule A or B in R18-14-203 to ADEQ.
- C. ADEQ shall not process a permit or construction review until the initial fee is paid in full.
- D. ADEQ shall prepare a final itemized bill after completing the final permit certification, construction review, facility plan doc-

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ument review and approval, or aquifer protection permit determination, but prior to issuance or denial.

1. If the actual cost of services exceeds the initial fee, ADEQ shall bill the owner for the actual cost of the services up to the maximum allowed under R18-14-204.
2. If an owner fails to pay the applicable service fees, ADEQ shall not provide any further water quality protection or drinking water service, other than a compliance inspection, for that owner until such time as the balance is paid in full.

E.G. All Fees fees for water quality protection services shall be paid either by county check, purchase order, city check, company check, certified check, or money order, which is made payable to ADEQ.

R18-14-206-R18-14-106. Reconsideration of the Bill; Appeal Process

- A. An owner or operator may ~~SEEK REVIEW OF who wishes to appeal to the Director, the number of hours contained on the final itemized bill by filing on and cost of a final bill shall file a written request for reconsideration with the Director.~~ The request shall specify, in detail, the matter or matters why the ~~number of hours billed BILL~~ is in dispute and shall include any SUPPORTING documentation ~~indicating that an error has been made.~~ The written request for reconsideration shall be ~~delivered to the Director in person, by mail or by facsimile submitted to ADEQ within 30 10 working days of the date of the final itemized bill, receipt of the final bill.~~
- B. The Director shall make a final decision ~~as to whether the number of hours and costs billed is are correct~~ ON THE REQUEST FOR RECONSIDERATION and ~~mail a final written decision shall be mailed to the owner or operator within 10 ten working days after receiving~~ the date of receipt by the Director of the written request for reconsideration. All Final decisions of the Director are subject to appeal pursuant to A.R.S. § 12-901 et seq.
- C. A final ~~Final decisions~~ decision of the Director ON A REQUEST FOR RECONSIDERATION is subject to the appeal process set forth in A.R.S. § 41-1092 pursuant to A.R.S. § 10-1092 et seq. A final decision of the Director is subject to appeal pursuant to A.R.S. § 12-901 et seq.

R18-14-207-R18-14-107. Effect on County Fees

A county and other local government implementing delegated ADEQ drinking water or water quality protection programs pursuant to A.R.S. § 49-107, may charge fees under the authority of either A.R.S. § 49-112, A.R.S. § 11-251.08, or A.R.S. § 36-187(C).

NOTHING IN THIS CHAPTER AFFECTS THE AUTHORITY OF COUNTY OR OTHER LOCAL GOVERNMENTS TO CHARGE FEES FOR IMPLEMENTING DELEGATED ADEQ WATER QUALITY PROTECTION PROGRAMS IN ACCORDANCE WITH STATUTORY AUTHORITY.

R18-14-208-R18-14-108. Review of Fees

- A. BY NO LATER THAN THE END OF FISCAL YEAR 1999, ADEQ SHALL COMPLETE A REVIEW OF REVENUES DERIVED FROM AND COSTS INCURRED FOR WATER QUALITY PROTECTION SERVICES AND SHALL ISSUE A WRITTEN REPORT ON THE REVIEW.
- B. ADEQ SHALL AFFORD THE PUBLIC AN OPPORTUNITY TO PARTICIPATE IN THE REVIEW, INCLUDING AN OPPORTUNITY TO EXAMINE AND COMMENT ON THE REPORT BEFORE A FINAL REPORT IS ISSUED.
- C. IF THE FINAL REPORT DEMONSTRATES THAT FEES CHARGED PURSUANT TO THIS CHAPTER ARE HIGHER OR LOWER THAN THE REASONABLE COSTS OF PROVIDING WATER QUALITY PROTECTION SERVICES, ADEQ SHALL, WITHIN THREE MONTHS AFTER COMPLETING THE REVIEW, COMMENCE A RULEMAKING TO ADJUST THE FEES ACCORDINGLY.

10. A summary of the principal comments and the agency response to them:

NOTE: The following comments were received during the public comment period in March and April 1996. The analyses and responses are those which ADEQ filed with GRRC along with the adopted rules. The agency response to some of these comments may have been made irrelevant as a result of changes made to the rule, based on dialogue with the regulated community, while the rules remained tabled by GRRC during September and October 1996.

I. GENERAL COMMENTS

**ISSUE 1:** Fees should be based on the number of people served by the system; i.e. smaller communities should pay less, systems with more users should pay more.

**ANALYSIS:** The proposed fee rules are structured so that the total fee assessed is related to the particular facility receiving the service not the size of the community's population. This is a more just and efficient method because the final fee will be the result of the adequacy of the individual facility's preparation (of a permit application, facility plan documents, etc.) rather than merely based on the population of the area it serves. A facility which has well prepared documents will pay less in total fees because ADEQ personnel will spend less time on the review and inspection of that facility. It would be unfair to disfavor a facility that has conducted adequate preparation simply because of the size of the community it serves. Furthermore it would be difficult to establish guidelines based on population because there is no set definition of what constitutes a "small community." Typically, however, smaller communities will pay less total fees than larger communities because they often employ simple project methods that are more readily subject to inspection and review. Systems with more users are generally more complex, taking longer to service thus resulting in higher overall fees.

**RESPONSE:** No change to the rule.

**ISSUE 2:** A simple flat rate or a pre-assigned number of hours for a specific activity would be more equitable than the proposed hourly fee.

**ANALYSIS:** Although appealing on its face, such a fee schedule is not actually "simple." The amount of time ADEQ spends providing a service can vary drastically depending on the complexity of the facility and the adequacy of its preparation. A flat rate might penalize those parties who have prepared well for the service while benefitting those parties who have not done so. Similarly a flat rate could result in fees that are too high for simple projects and insufficient for complex projects.

ADEQ does not have data regarding project complexity sufficient to establish a schedule based on project complexity. Thus, flat rates can be arbitrary and inequitable. For example, if a flat rate were applied to wastewater treatment systems, then conveyance systems, non-complex treatment systems and complex treatment systems, which might otherwise have a less expensive review, would all have to be subject to the same fee due to the lack of data regarding project complexity. Review of drinking water facilities documentation would face similar problems. Given the complexity and wide variety of engineering practices and design techniques it is not possible to determine how long document review will take prior to the submission of the documents. Therefore, ADEQ believes that adhering to its customary practice of setting fees on an hourly rate will result in the most accurate calculation of actual costs for each project in this area.

The submitting entity should be able to use the information provided in the preamble to estimate the cost of a project that is submitted for approval (simple vs. complex). If the entity is trying to budget costs, and is unable to estimate the approximate fee that will be associated with the project, it should budget at the maximum fee rate to avoid going over budget. As ADEQ gains experience with the administration of these rules (within one to two years) the agency will likely be able to provide good faith estimates of costs/fees.

**RESPONSE:** No change to the rule.

**ISSUE 3:** Travel time should not count in the number of hours to be charged. Inclusion of travel time unfairly discriminates against rural communities far away from the metropolitan areas where ADEQ personnel are located.

**ANALYSIS:** Travel time is a legitimate and, at times, substantial cost of the services that ADEQ provides. ADEQ recognizes, however, that rural communities are often least able to bear these costs. In order to resolve this problem the agency has revised the rule to limit billable travel time to a maximum of two hours each way. Furthermore ADEQ intends to conduct multiple inspections of facilities in the same geographic area when practicable. Travel expenses will then be prorated among these facilities, whether located in metropolitan or rural areas.

**RESPONSE:** The R18-14-103(C) and R18-14-203(A)(2) have been revised to require that a facility shall not be charged for more than 2 hours of travel time each way, per round trip.

**ISSUE 4:** There should be some form of incentive to ensure ADEQ activities are completed as quickly as possible.

**ANALYSIS:** ADEQ management is aware of this concern and the intent is that each service will be conducted as expeditiously as possible. Currently, the Department has no data upon which to establish the maximum number of hours each service should take. The higher the quality and the level of completeness of the documents submitted to ADEQ, the sooner the review or inspection will be completed. Substandard documentation will cause ADEQ personnel to have to spend more time in the inspection or review, thus increasing the overall fee charged.

**RESPONSE:** No change to the rule.

**ISSUE 4(a):** ADEQ should hire the additional staff and complete appropriate training by the time these rules are final.

**ANALYSIS:** ADEQ recognizes the importance of having not only capable staff in sufficient numbers. The state legislature has authorized ADEQ to hire 41 additional staff. The agency has already begun to hire new staff and intends to continue hiring and training half of the new staff necessary through the fall of 1996. The remaining half will be hired in fiscal year 1997.

**RESPONSE:** No change to the rule.

**ISSUE 4b):** How will ADEQ ensure that the revenue streams will be dedicated to new positions and result in an increase in efficiency rather than used as an open-ended pricing structure to augment appropriations shortfalls?

**ANALYSIS:** ADEQ's intention in promulgating fees is to recover costs and ensure quality service to the community. All fees are currently deposited in a water quality fee fund established by the state legislature. Revenue streams must be returned to the program that generated them to be used for staffing and program support. While the legislature may redirect these funds in the future ADEQ does not advocate the purpose of the fee fund be changed.

**RESPONSE:** No change to the rule.

**ISSUE 5:** ADEQ should ensure that the bill is sent to the appropriate party in a timely manner after services are rendered.

**ANALYSIS:** ADEQ agrees that it is absolutely necessary to bill parties in a timely manner and is currently doing so in the APP program. The agency intends to accurately track hours spent in providing a service for each facility in order to ensure invoice fees correctly reflect actual costs. The regulated community can assist ADEQ by providing the specific name, phone number, fax number and address of the party that they wish to have receive billing statements. Any party not punctually billed after receiving services from ADEQ should alert the Accounting Unit in the Office of Fiscal Services.

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**RESPONSE:** No change to the rule.

**ISSUE 6:** Billing should be of sufficient detail (e.g., hours and other expenses) so that it clearly justifies the final fee assessed.

**ANALYSIS:** ADEQ agrees with the necessity to itemize its billing. Such a method is currently employed in the APP process. The agency will review its system to see where further improvements can be made in this regard.

**RESPONSE:** R18-14-105(C) and R18-14-205(B) have been revised to require that the bill specify the total amount of fees due, the total number of hours of the review and what portion of those hours is attributable to travel.

**ISSUE 7:** The punitive measures available to enforce collection of fees is unduly severe.

**ANALYSIS:** ADEQ does not agree that the measures used to collect fees are "punitive." Withholding a permit until receipt of fees due is a reasonable practice and usual practice and helps to ensure a consistent revenue stream. In many cases, a party has multiple applications submitted at one time resulting in substantial fees. In order to protect both the submitting parties and the agency ADEQ takes a pay-as-you-go approach. This has been found to be an effective policy in the APP program. Furthermore, in a revolving fund system such an approach is necessary for the consistent provision of quality service.

**RESPONSE:** No change to the rule.

**ISSUE 8:** Personal checks, county checks, purchase orders, city issued checks and company checks should be accepted as forms of payment.

**ANALYSIS:** ADEQ understands that the practice of requiring payment by a cashier's check or money order poses an unnecessary burden upon those who receive the services. ADEQ will accept the above mentioned forms of payment except for personal checks. ADEQ continues to believe that personal checks are an inappropriate form of payment due to the risk of insufficient funds.

**RESPONSE:** R18-14-105(E) and R18-14-205(E) have been revised to provide for additional methods of payment.

**ISSUE 9:** The proposed appeal process is unduly severe. A sixty or thirty day time for appeals should replace the proposed ten day time period.

**ANALYSIS:** The appeal process proposed by ADEQ is a standard and effective process well established in other administrative situations. Although the agency believes that 10 days provides an adequate time to file an appeal, in order to ensure equitable treatment of all parties the appeal time has been increased to 30 days.

**RESPONSE:** The R18-14-106 and R18-14-206 have been revised to increase the time for appeal to 30 days.

**ISSUE 10:** ADEQ should inform the regulated community about the final rule.

**ANALYSIS:** ADEQ agrees and has always provided notice of the final promulgation of a rule. Notification of a final rule is always published in the Arizona Administrative Register. In addition, all rules are discussed in the monthly ADEQ Rulesletter available to all Arizona citizens upon request. Finally, the public has the opportunity to learn of a final rule through the public presentations that ADEQ frequently holds. Parties who comment on proposed rules are given specific notification of the final adoption of the rule.

**RESPONSE:** No change to the rule.

**ISSUE 11:** All publicly-owned facilities should be exempt from the fees, not just state facilities.

**ANALYSIS:** A.R.S. §§ 49-203(A)(7), 49-353(A)(2)(b) and 49-363(A)(7) exempt only state agencies from fee payment. Absent the state legislature amending the law, ADEQ has no authority to exempt publicly-owned facilities.

**RESPONSE:** No change to the rule.

**ISSUE 11a):** Are there different pricing structures for the public and private sector?

**ANALYSIS:** No. There is one fee structure for services rendered based on an hourly rate. The private sector, local and federal government are all subject to that same rate.

**RESPONSE:** No.

**ISSUE 12:** ADEQ should add a section to the rule which allows the counties performing delegated functions to continue to charge fees in accordance with the State's health laws A.R.S. §§ 11-251.08 and 36-187.

**ANALYSIS:** ADEQ agrees that it is necessary to add such a section which allows Counties to maintain current procedures.

**RESPONSE:** ADEQ has added new sections R18-14-107 and R18-14-207 which clarify that a county or other local government may continue charging fees for their services in accordance with state health laws

**ISSUE 13:** Besides the input of Arthur Anderson how did ADEQ decide on the hourly rate of \$49?

**ANALYSIS:** In order to ensure that the proposed fees were fair and an accurate reflection of delivering its professional services, ADEQ contracted with Arthur Andersen and Company, an independent public accounting firm, to study ADEQ's permitting, plan review and compliance processes. In addition to the Arthur Andersen study the agency also conducted an internal review in which it interviewed staff and documented response times to act on permit applications and other submissions in arriving at the \$49 per

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hour rate.

**RESPONSE:** No change to the rule.

**ISSUE 14:** Under the proposal, a less experienced employee taking more time in providing the requisite service would cause the fee to be higher than an experienced employee would generate.

**ANALYSIS:** ADEQ understands and appreciates this concern. It is not possible to have all staff at the same level of expertise. ADEQ will try to minimize the variation in fees charged for similar work. It is our intent to continue to assign the simpler projects to the less experienced staff, and the more complex projects to the senior staff. ADEQ is taking steps to reduce its staff turnover. In the Drinking Water Technical Engineering Unit (the Unit that performs plan reviews and approvals), there has been no staff turnover for more than two years.

**RESPONSE:** No change to the rule.

**ISSUE 15:** Does ADEQ intend to charge a fee for pre-submittal consultations?

**ANALYSIS:** ADEQ agrees that a pre-submittal consultation used to explain procedures should not be fee-based.

**RESPONSE:** Accordingly, the ADEQ has revised R18-14- 103 and R18-14-203 have been revised to provide of that ADEQ will not charge the owner for one initial meeting to consult with ADEQ personnel before submitting a request.

**ISSUE 16:** ADEQ should complete reinspection for non-compliance within one month after the facility notifies the Department that the deficiencies have been remedied.

**ANALYSIS:** ADEQ understands the concern to have reinspection occur expeditiously after remedying deficiencies, however; the scope of these rules are limited to setting forth fee requirements and do not address time frames for reinspection. It is always the Department's goal to conduct reinspection as expeditiously as possible.

**RESPONSE:** No change.

**ISSUE 17:** Notification of the proposed rule was of a short period. The comment period should be extended.

**ANALYSIS:** ADEQ disagrees that the notice period for the rules was short and that the comment period should be extended. The Department followed all notification requirements as set for by the legislature in A.R.S. § 41-1023. Additionally, the Department took the extraordinary step of mailing over 3,000 notices to interested parties around the state to give individual notice of the rules and the comment period. Many members of the public did, in fact, attend the public meetings and many sent in comments in response to the rules. The ADEQ believes that this is an indication that the notice period was not too short, and that extending the comment period is not warranted.

**RESPONSE:** No change.

**ISSUE 18:** The EIS was not available for the review in Pima County which the commenter unable to determine the equitability of the fee proposed in the rules.

**ANALYSIS:** The EIS was available, upon request, to anyone throughout the State. The cost of mailing the EIS and the entire preamble and rules with the approximately 3,000 mailings was prohibitive, but certainly, the Department did make them available to those who requested.

**ISSUE 19:** How does the Department determine the threshold for when initial fees are charged?

**ANALYSIS:** Initial fees are charged for ADEQ services provided and are based on the hourly rate as determined by the Arthur Andersen fee study.

**RESPONSE:** No change to the rules.

**ISSUE 20:** Regulated utilities should be exempted from the permit and fee requirements until there is a substantial reform of the property/use tax laws.

**ANALYSIS:** There is no provision for such an exemption in the legislation under which these rules are mandated, therefore, the Department has no authority to make such an exemption.

**RESPONSE:** No change to the rule.

**ISSUE 21:** Which of the services required by ADEQ can be performed by a professional engineer in the employ of the utility?

**ANALYSIS:** The utility can certainly benefit by using a professional engineer on staff to make the documents submitted to ADEQ more complete and better prepared. This could mean that the ADEQ review will take less time. However, ultimately, permits and approvals are issued by ADEQ, and ADEQ review and approval will not be substituted.

**RESPONSE:** No change to the rule.

**ISSUE 22:** It is not clear in the proposal whether the fees cover the full cost of services, including salaries, supplies services, supervision, administration, indirect and overhead costs. A full cost of service and the extent to which fees cover the full cost of services should be included in the rulemaking or explained in the response to comments.

**ANALYSIS:** This information is discussed in the economic impact statement which has been filed along with this final rulemak-

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ing.

**RESPONSE:** No change to the rule.

**ISSUE 23:** A category should be included in Schedules B and D for plan reviews for sewer line extensions and line replacement projects.

**ANALYSIS:** The ADEQ agrees. Definitions have been added to R18-14-201 for "Approval of construction" and "Approval to construct". Included within those terms are sewer line extension and line replacements. While sewer line extensions and line replacements are not set out separately in Schedules B and D, they are included within the categories of fees for construction approvals.

**RESPONSE:** R18-18-201 has been revised to add definitions for "Approval of construction" and "Approval to construct" Schedules B and D categories construction approvals.

**ISSUE 24:** An economic analysis of these fees for public water systems were not present in the Arthur Andersen report and fees should not be implemented without an economic analysis of the impacts to public water systems and the general public.

**ANALYSIS:** At the time the proposed rules were file with the GRRRC, a preliminary economic impact statement (EIS) was filed along with the rules. At that time, ADEQ was still gathering information for the final EIS and invited public input on the EIS, as is required by statute. The final EIS is now complete and filed with the final rules.

**RESPONSE:**No change to the rule.

**II. DRINKING WATER ISSUES**

**A. CONSTRUCTION/PLAN REVIEW**

**ISSUE 1:** How will the Drinking Water Program benefit if it receives no new FTE's?

**ANALYSIS:** In general, the revenue streams will support the programs that generate them. The Drinking Water Program will not have new FTEs funded by fees in the first year; however, 4 positions within the program will be partially funded by those fees in the 2nd year. New FTE's for the Drinking Water Program may be established in subsequent years depending on the need and the revenue available to support those positions.

**RESPONSE:** No change to the rule.

**ISSUE 2:** What is the length of cycle time expected after the new fees are established?

**ANALYSIS:** The cycle time from project submittal to project approval or denial varies with the quality and completeness of the submittal. ADEQ expects that a complete application for approval to construct will be acted upon by the Department within 30 days of receipt. Increase in staff and program support will greatly assist the Department in meeting the 30-day time frame. Currently, in the Drinking Water Program, if a project is approvable as submitted, it will be reviewed and approved by the ADEQ in less than 4 weeks.

**RESPONSE:** No change to the rule.

**ISSUE 3:** Does the initial fee cover both the approval to construct and the approval of construction?

**ANALYSIS:** No, it does not cover both. There will be separate fees associated with the approval to construct review and the approval of construction review. These approvals may be several months or years apart depending on the project. Therefore the agency requires that initial fees be submitted in separate applications.

**RESPONSE:** R18-14-203 has been revised to clarify that separate fees are charged.

**ISSUE 4:** Water companies regulated by the Arizona Corporation Commission (ACC) cannot pass costs to customers without approval from the ACC. How can ADEQ guarantee ACC will permit the rate increase?

**ANALYSIS:** ADEQ can not guarantee that ACC will approve rate increases. However, in a rate case, if the expenditures are well documented by the water system and deemed to be appropriate, ACC generally will grant a special assessment or a rate increase. ADEQ will work with the ACC to address issues as they arise. (Note: Less than one fourth of the water systems regulated by ADEQ are regulated as utilities by the ACC.)

**RESPONSE:** No change to the rule.

**ISSUE 5:** If a project cannot be built within the initial year (due to delay in ACC approval or delay in approval of loan), the water company is subjected to a potential \$1970 fee for a time extension. This is unfair.

**ANALYSIS:** A project should not be submitted for approval if financing of that project has not been secured. In the past, ADEQ has spent many hours reviewing plans for projects which were never built. Not only does the new fee cover a portion of the cost of the service provided by the Department, it will also serve as an incentive to not submit projects for approval unless there is good indication that construction will commence within one year of approval.

**RESPONSE:** No change to the rule.

**ISSUE 6:** Where a source is owned by one person, and one or more systems with a different owner(s) uses the source, who is

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responsible for paying the fees?

**ANALYSIS:** The fees are associated with activities pertaining to specific facilities. For plan review and Approval of Construction, the individual (regulated entity) submitting the project for approval is responsible for the applicable fee. If the project is submitted on behalf of several regulated facilities, the parties involved will need to make arrangements/agreements among themselves. The Department will bill the entity submitting the application.

**RESPONSE:** No change to the rule.

**ISSUE 7:** ADEQ should consider using a "per page" fee basis for plan reviews.

**ANALYSIS:** Following public comment, the Department considered the concept of a "per page" fee for plan review. The simplicity of principle is complicated by the complexity and variability of plan documents for a wide range of project types submitted by hundreds of engineers. Plan documents contain various amounts of information and completeness, and result in considerable review time variation. ADEQ staff felt that a per-page fee basis might cause the submitter to be reluctant to provide the Department with engineering details for fear of increasing the plan review fees. Ironically, this may delay the approval of the project and cause more staff time to be used in requesting additional information. A thorough, detailed, easily-read set of plans is desirable to expedite the plan review process.

**RESPONSE:** No change to the rule.

**B. Compliance Inspections**

**ISSUE 1:** There is no statutory authority to impose inspection fees on water production facilities. Public entities in particular should not be charged fees.

**ANALYSIS:** While ADEQ does not necessarily agree that it lacks authority in this area the rule has been revised to exclude compliance inspection fees at this time because the authority is not explicit. Further, whether a facility is a public entity or a private entity has no bearing on the Department resources required to provide services to the facility.

**RESPONSE:** R18-14-102 has been revised to delete the requirement that ADEQ assess and collect fees for compliance inspections. R18-14-104 has been revised to delete the amount of the maximum fee for compliance inspections. R18-14-105 has been revised to delete provision for payment of the fee for a compliance inspection.

**ISSUE 2:** ADEQ has not conducted routine visits in the past. How frequently will ADEQ personnel inspect facilities?

**ANALYSIS:** The Drinking Water Program has in the past, and will continue in the future to conduct routine inspections or sanitary surveys of public water systems. In general, groundwater systems are inspected every three years, surface water systems are inspected annually. More frequent inspections may be conducted if complaints are received or it is necessary to follow-up for reasons of non-compliance.

**RESPONSE:** No change to the rule.

**ISSUE 3:** Will all new ADEQ employees be working on the backlog of construction reviews? If so, what is the purpose of the inspection fee?

**ANALYSIS:** Under the current workload, nearly all drinking water reviews are completed within 30 days of a complete submittal, and, at present, no significant backlog exists. Consequently, there are no new FTE's planned for the Drinking Water Program for the next fiscal year. New staff, if obtained, will be utilized in whatever area of the Program is deemed most appropriate. This may include database programming, promulgating rules, or any other activity that will enhance and streamline the Drinking Water Program. However, in response to public comments made that the statutory authority is not clear for charging fees for this activity, the rule package has been revised to exclude drinking water compliance inspections from water quality fees.

**RESPONSE:** The rule has been revised to exclude Drinking Water compliance inspections from water quality fees as set forth in Issue 1 above.

**ISSUE 4:** How will ADEQ prevent the rule from being vindictive? The rule should prevent ADEQ from sending out inspectors every month or every week to determine compliance or take samples. The number of inspections should be limited by the rule.

**ANALYSIS:** It is not necessary to limit the number of inspections or site visits conducted by Drinking Water staff because in response to public comments, the rule package has been altered to exclude Drinking Water compliance inspections from water quality fees.

**RESPONSE:** The rule has been revised to delete Drinking Water compliance inspections from water quality fees.

**ISSUE 5:** There should be a standardized checklist for inspections so that it is clear what is to be inspected.

**ANALYSIS:** The Drinking Water Program currently utilizes a standardized checklist for inspections; however, in response to public comments, the rule package has been revised to delete Drinking Water compliance inspections from water quality fees.

**RESPONSE:** The rule has been revised to delete Drinking Water compliance inspections from water quality fees.

**ISSUE 6:** Does ADEQ intend to charge fees for reviewing self-monitoring reports and entering data?

**ANALYSIS:** No, the rules do not include charges for the costs involved with reviewing self-monitoring reports and entering data

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into the Safe Drinking Water Database.

**RESPONSE:** In R18-14-201, a definition for "compliance inspection" was added which clarifies that a compliance inspection does not include ADEQ review or computer entry of self-monitoring data.

**III. WASTEWATER ISSUES**

**A. CONSTRUCTION/PLAN REVIEW**

**ISSUE 1:** Schedule B should address plan review for interceptor and collection lines. What is the initial fee and average cost for these services?

**ANALYSIS:** ADEQ reviews all wastewater design plans prior to construction. These design plans address treatment plants as well as collection systems, including interceptors. Schedule B contains initial fees for these reviews.

**RESPONSE:** ADEQ has added definitions in R18-14-201 for "Approval to construct" and "Approval of construction" which establish the activities which are a part of those terms, including interceptor and collection lines. Schedules B and D have been revised to clarify initial and maximum fees for "Approval to Construct" and "Approval of Construction".

**ISSUE 2:** APP staff increases are significantly less than the number necessary. How much will these new staff actually improve cycle time?

**ANALYSIS:** ADEQ believes additional staff will substantially improve cycle times. For example, four staff members are currently conducting wastewater reviews. Two staff members will be added. This will reduce cycle times by at least 33%. Moreover additional staff may be added in subsequent years if time frames are not being met.

**RESPONSE:** No change to the rule.

**ISSUE 2a:** What will new cycle times be after the new fees are established?

**ANALYSIS:** Based on the addition of 29 new positions to the existing Water Protection Approval and Permits section staff of 42 (which includes the APP program) and assuming both good quality submissions and a reasonable attrition rate, cycle times should decrease by 40%-50%.

**RESPONSE:** No change to the rule.

**ISSUE 3:** Are separate initial fees required for each type of approval?

**ANALYSIS:** Yes. As noted in the Analysis of II(A) Issue 3, separate initial fees are charged because approvals may be several months or years apart, depending on the project.

**RESPONSE:** R18-14-203 has been revised to clarify that separate initial fees are required for each type of approval.

**ISSUE 4:** Clarify the definition of domestic wastewater system construction plan reviews. Does this item and the associated volume limits apply to new wastewater extension projects? Are projects less than 2000 gpd subject to the fees?

**ANALYSIS:** A domestic wastewater system is any mechanism, device, or technology used to convey and treat sanitary waste. Any construction reviews and/or approvals are subject to these fees. However, conventional septic tanks are specifically excluded from the definition "Wastewater treatment facility." A definition has been added to R18-14-201 for "Conventional septic tank" which clarifies that a conventional septic tank is one with a capacity of greater than 20,000 gpd. Review and approval of individual wastewater projects is generally conducted by the counties or local health departments and, thus, subject to local, rather than state, fees.

**RESPONSE:** A definition has been added to R18-14-201 for "Conventional septic tank".

**B. PERMITS**

**ISSUE 1:** Clean Water Act Section 401/402/404 fees do not appear justifiable since the Federal Government does not require fees for these permits.

**ANALYSIS:** The Army Corps of Engineers currently charges a fee of \$100 for an individual Section 404 Permit sought by private companies. Furthermore, Section 301(o) of the Clean Water Act authorizes EPA to charge fees for NPDES permits based on variances. At present, ADEQ has not received approval to issue NPDES or Section 404 permits in lieu of the Federal government. However, ADEQ currently assists U.S. EPA by drafting and publicly noticing NPDES permits for the Agency. In the future event the State receives primacy, we intend to charge fees for this service as well. In the interim, today's rules allow ADEQ to charge fees for the State's efforts to certify, under Section 401 of the Clean Water Act, that these Federal permits satisfy State water quality standards.

**RESPONSE:** No change to the rule.

**ISSUE 2:** Will a mining operation which has tailing piles and ponds, base metal leaching operations, and precious metals processing have to pay three fees for a single permit which addresses all three activities?

**ANALYSIS:** The initial fees for a facility such as the one described would be the cumulative total of applicable fees for each component of the facility. However, in no case will initial fees exceed the maximum permit fee applicable for the facility (\$16,000).

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**RESPONSE:** No change to the rule.

**ISSUE 3:** Will the annual APP registration fee be dropped?

**ANALYSIS:** No, the APP registration fee functions independently of this promulgation of fee for services.

**RESPONSE:** No change to the rule.

**ISSUE 4:** Is the 5-year renewal of an NPDES permit considered a New Permit, Major Modification or Other Modification (i.e., \$2,400, \$1,200, or \$100)?

**ANALYSIS:** The renewal of an NPDES permit is considered a "new permit" for purposes of Schedules A and C. During this process, all conditions of an NPDES are reconsidered and may be revised. During a modification occurring during the effective term of an NPDES permit, only those conditions proposed to be changed may be revised. Federal regulations describe major modifications at 40 CFR 122.62 and the State has no discretion regarding this designation. Similarly, minor modifications are set out at 40 CFR 122.63. In both situations, since the scope of modification activities is less complex than issuance or reissuance of the entire permit, the initial and maximum fees are established at a lower amount.

**RESPONSE:** No change

**ISSUE 4a):** Verify that the Schedule D figure for the ADEQ service title "Water Quality Certifications of NPDES Permits" shown as \$3,200 is correct.

**ANALYSIS:** ADEQ verifies that \$3,200 is correct, however the amount was moved, for purposes of clarification, to Schedule C.

**RESPONSE:** The fees for compliance inspections were deleted from Schedule D and now appear in Schedule C because the fees are connected to the facility, not certifications, as are covered in Schedule D.

**ISSUE 5:** Does this rule propose an annual fee for a permitted, industrial waste surface impoundment: If so, what is the fee?

**ANALYSIS:** No. Annual Registration Fees are provided by statute and currently limited to the APP program. This rule establishes a fee for services system and contains no annual assessment for regulated activity.

**RESPONSE:** No change to the rule.

**ISSUE 6:** APP "applicability determination" fees should only be assessed where a determination is made that the facility needs an individual APP permit.

**ANALYSIS:** ADEQ agrees. As stated in Schedule C, footnote 4, "Where an applicability review determines that an APP is needed, the fee for the applicability determination will be added to the total permit fee."

**RESPONSE:** No change to the rule.

**ISSUE 7:** There should be no fees associated with the routine activities described in proposed R18-14-202(A)(2)(c),(d) and 203(A)(3).

**ANALYSIS:** These sections of the proposed rule cover drafting and/or issuing an NPDES and/or Section 404 permit, registering significant industrial users permitted to discharge into community sewage systems and the fee for providing water quality certification of a nationwide §404 permit. ADEQ does not agree that services associated with NPDES and §404 permits are "routine." These services vary depending on the complexity of permitted facility. ADEQ recognizes, however, that §404 general permits are somewhat routine so they will be subject to a flat fee. It is not reasonable to establish a flat fee for individual NPDES and §404 permits. As with the entire rule, it is necessary to charge the applicable fees in order for ADEQ to recover its costs for the administration of these services. These fees are necessary since they constitute a significant percentage of the agency's water pollution control expenses.

**RESPONSE:** No change to the rule.

**ISSUE 8:** Define "Water Quality Certification for other Federal Permits."

**ANALYSIS:** Under existing federal and state law ADEQ must provide certification of any project requiring a federal permit which may affect water quality within the state. The most common is the Clean Water Act's Section 401 certification which is associated with NPDES permits for direct discharges. However ADEQ must also provide certification to the Army Corps of Engineers which administers CWA Section 404 Dredge and Fill permits to the effect that those permit applicants' projects will not violate water quality standards. Additionally, state certification is requested in the areas of airport and dam construction and/or modification.

**RESPONSE:** No change to the rule.

**C. COMPLIANCE INSPECTIONS**

**ISSUE 1:** How will ADEQ ensure inspection fees are not vindictive? The rule should prevent ADEQ from sending out inspectors every month or week to determine compliance or take samples. The number of inspections should be limited by the rule.

**ANALYSIS:** ADEQ appreciates this concern. ADEQ administers a comprehensive compliance program including periodic inspection of facilities. These inspections are conducted according to established protocol. Currently inspections are expected to be scheduled on at least a bi-annual basis. The agency does not believe these inspections are vindictive. However, in order to

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ensure the protection of regulated facilities ADEQ is willing to limit fees charged to no more than one inspection per year. Furthermore the limited number of agency inspectors and the large number of regulated facilities itself serves to act as a check upon the number of inspections.

**RESPONSE:** Again, the provisions for compliance inspections for drinking water inspections have been deleted. R18-14-202(B) has been added to clarify provide that a fee will not be charged for more than one routine inspection per year.

**ISSUE 2:** The proposed fees will end informal consultation with inspectors.

**ANALYSIS:** ADEQ will not count up to 30 minutes of technical assistance provided in each inspection toward the total fee assessed.

**RESPONSE:** R18-14-202(C) has been added to provide that ADEQ will not charge a fee for the first 30 minutes of technical assistance during a compliance inspection.

**ISSUE 3:** Fees should not be charged for compliance, particularly to public entities.

**ANALYSIS:** ADEQ disagrees. The state legislature authorized the collection of fees for routine inspections and follow-up visits because they constitute a substantial portion of ADEQ's administrative costs. The costs the agency incurs do not depend on whether the regulated facility is publicly or privately owned. The regulated community can minimize the fees it will pay through proper compliance measures and good record keeping.

**RESPONSE:** No change to the rule.

**ISSUE 3a):** Does ADEQ intend to charge fees for reviewing self-monitoring reports and entering data?

**ANALYSIS:** No. These are not considered part of a routine compliance inspection.

**RESPONSE:** No change to the rule.

**ISSUE 4:** Is there an initial fee and/or minimum charge for compliance inspections?

**ANALYSIS:** No. There are no initial or minimum charges for compliance inspections. Facilities will be billed immediately following completion of the inspection report.

**RESPONSE:** No change to the rule.

**ISSUE 5:** Are there compliance inspections associated with water quality protection?

**ANALYSIS:** Yes. ADEQ conducts routine inspections to ensure compliance with water quality standards, APP's, construction approvals and effluent reuse.

**RESPONSE:** No change to the rule.

**ISSUE 6:** ADEQ has not conducted routine visits in the past. How frequently will ADEQ personnel inspect facilities?

**ANALYSIS:** As a long term goal ADEQ will try to conduct annual wastewater inspections. However, in fiscal year 1997 the agency expects to conduct inspections at approximately half of the regulated facilities.

**RESPONSE:** No change to the rule.

**ISSUE 7:** The financial burden of compliance inspections should be on the state's taxpayers.

**ANALYSIS:** ADEQ disagrees. In authorizing ADEQ to collect fees for compliance inspections, the State Legislature intended for the facility owner, or those who use and directly benefit from the services, to shoulder the costs of being inspected.

**RESPONSE:** No change to the rule.

**ISSUE 8:** The words "inspect," "sample," "inspection," "compliance inspection" and "regulated facilities" need to be defined.

**ANALYSIS:** ADEQ agrees in part and has defined "compliance inspection" and "regulated facilities." The Agency believes that separate definitions for "inspection," "inspect" and "sample" are not necessary, as they are all a part of "compliance inspection".

**RESPONSE:** R18-14-201 has been revised to add definitions for "compliance inspection" and "regulated facility".

**ISSUE 9:** There should be a standardized checklist for inspections so that it is clear what is to be inspected.

**ANALYSIS:** ADEQ personnel currently utilize such a checklist in their inspections and will continue to do so.

**RESPONSE:** No change to the rule.

**IV. CHANGES INITIATED BY THE DEPARTMENT**

Changes were made by the Department in response to comments from a preliminary review by staff at the Governor's Regulatory Review Council for purposes of clarity and conciseness and to conformity with stylistic protocol. Additional changes were initiated by ADEQ for purposes of clarity and conciseness.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.

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12. **Incorporation by reference and their location in the rules.**  
None.
13. **Was this rule previously adopted as an emergency rule? If so, please indicate the Register citation:**  
Not applicable.
14. **The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**PERMIT AND COMPLIANCE FEES**

**ARTICLE 1. WATER QUALITY PROTECTION FEES**

- R18-14-101. Definitions
- R18-14-102. Fee Services
- R18-14-103. Hourly Rates and Initial Fees
- R18-14-104. Maximum Fees
- R18-14-105. Fee Assessment and Collection
- R18-14-106. Reconsideration of the Bill; Appeal Process
- R18-14-107. Effect on County Fees
- R18-14-108. Review of Fees

**ARTICLE 1. WATER QUALITY PROTECTION FEES**

**R18-14-101. Definitions**

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, 49-241.02, 49-331, and 49-362(I), the terms in this Article have the following meanings:

1. "ADEQ" means the Department of Environmental Quality.
2. "Annual inspection" means an annual inspection of sewage disposal for a subdivision pursuant to A.R.S. § 49-104(B)(11) an annual inspection of a sewage collection, treatment, disposal or reclamation system pursuant to A.R.S. § 49-104(B)(13) or a mandatory annual routine operation and maintenance inspection of an on-site wastewater treatment facility pursuant to A.R.S. § 49-362(A)(5).
3. "Approval of construction" means an ADEQ approval to operate a constructed wastewater collection, treatment, storage, or disposal facility, or sewer line extensions or line replacements, issued pursuant to A.A.C. R18-9-805.
4. "Approval to construct" means an ADEQ approval to construct a proposed wastewater collection, treatment, storage, or disposal facility, or sewer line extensions or line replacements, issued pursuant to A.A.C. R18-9-804.
5. "Approved" or "approval" means written approval from ADEQ.
6. "Aquifer protection permit" means an individual, area wide, or general permit issued pursuant to A.R.S. §§ 49-203 or 49-241 through 251, or 18 A.A.C. 9, including denied permit applications.
7. "Conventional septic tank" means a septic tank system with a capacity of greater than two thousand gallons per day.
8. "gpd" means gallons per day.
9. "Major modification" means any revision to an issued aquifer protection permit under A.R.S. § 49-201(19).
10. "NPDES permit" means a National Pollutant Discharge Elimination System permit issued by ADEQ pursuant to the delegated authority from the United States Environmental Protection Agency for a point source discharge of pollutants into waters of the United States, as required by 33 U.S.C. 1342 (402) of the Clean Water Act. For purposes of this Article, an NPDES permit includes a denied permit application for an NPDES permit.

11. "Other modification" means a revision to an issued aquifer protection permit that is not a major modification, and includes a minor modification as defined in R18-9-121(D).
12. "Owner or operator" means a person with a vested interest in real or personal property, or an authorized representative or agent of that person.
13. "Related costs" means ADEQ expenditures for supplies, equipment, analysis, photocopying, transportation, and per diem.
14. "Request" means a written application, letter, or memorandum submitted by the owner or operator to ADEQ for water quality protection services. A request is made at the time it is received at ADEQ.
15. "Reuse permit" means a permit issued by ADEQ for wastewater effluent reuse pursuant to A.A.C. R18-9-702(C). A reuse permit includes a denied application for a reuse permit.
16. "Significant Industrial Users" means the same as in 40 CFR 403.3(t).
17. "Site visit" means an inspection conducted prior to issuance of an approval of construction or approval to construct.
18. "Time extension" means a written extension of the expiration date for an existing construction approval issued by ADEQ.
19. "U.S. EPA" means the United States Environmental Protection Agency.
20. "Wastewater treatment facility" means any of the processes, devices, structures, pipes, equipment, and earthworks which are used for collecting, treating, and disposing of domestic wastewater, including reusing the treated wastewater. Wastewater treatment facility does not include conventional septic tanks or industrial, agricultural, or similar systems or facilities for the collection, distribution, treatment, reuse, or disposal of wastewater or if the water or wastewater is used or reused for nonpotable purposes.
21. "Water quality protection service" means reviewing a request for a determination of applicability; issuing, modifying, transferring, or denying an aquifer protection permit, reuse permit, or NPDES permit; performing a clean closure plan review; registering a dry well; reviewing an "approval to construct", "approval of construction", or a time extension request, conducting a site visit; registering significant industrial users; or conducting an annual inspection.

**R18-14-102. Fee Services**

- A. ADEQ shall assess and collect fees for water quality protection services, including any site visits.
- B. ADEQ shall not charge a fee for the first 30 minutes of technical assistance provided during an annual inspection or site visit.

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**R18-14-103. Hourly Rates and Initial Fees**

- A. Except as set forth in subsection B, the fee for any service described in R18-14-102 shall be calculated using an hourly rate of \$49 multiplied by the number of hours reasonably required to provide a water quality protection service.
1. ADEQ shall not charge the owner or operator a fee for an initial meeting to consult with ADEQ personnel prior to submitting a request for water quality protection services.
  2. ADEQ shall not bill an owner or operator travel time.
- B. The following flat fees are established for the identified services:
1. The fee for a dry well registration shall be \$10 per dry well.
  2. The fee for a significant industrial user registration shall be \$250 per year.
- C. The initial fees for all ADEQ water quality protection services, set forth in Schedules A or B, shall be paid at the time the

request for services is made. When more than 1 initial fee is applicable to a request for multiple water quality protection services, or for application for multiple types of discharging facilities, the initial fee owed shall be the sum of all applicable initial fees, not to exceed the applicable maximum fee. The owner or operator shall remit a separate initial fee for each request. If an initial fee exceeds the maximum fee charged under a fee cap, the owner or operator shall remit the applicable capped fee.

- D. Upon request, ADEQ may set an alternative, lower initial fee on a case-by-case basis, when it is likely that the final fee will not exceed 70% of the otherwise applicable initial fee.

**R18-14-104. Maximum Fees**

ADEQ shall not assess more than the maximum fee for each of the services set out in Schedules C and D.

Schedule A

**INITIAL FEES FOR ADEQ WATER QUALITY PROTECTION PERMITS**

TYPE OF DISCHARGING PERMIT <sup>1</sup>	New Permit <sup>2</sup>	Major Modification	Other Modification
<b>Wastewater Treatment Facilities (With a design greater than or equal to 20,000 gpd)</b>			
Lined Surface Impoundments	\$ 1,800	\$1,000	\$ 100
Discharge to Surface Waters	\$ 1,800	\$1,000	\$ 100
Subsurface Discharge	\$ 2,400	\$1,200	\$ 100
<b>Wastewater Treatment Facilities (With a design Less than 20,000 gpd)</b>			
Industrial Facilities			
Lined Surface Impoundments	\$ 4,500	\$ 2,200	\$ 300
Discharge to Surface Waters	\$ 4,500	\$ 2,200	\$ 300
Subsurface Discharge	\$ 4,500	\$ 2,200	\$ 300
<b>Mine Facilities</b>			
Tailing Piles or Ponds	\$ 6,000	\$ 3,000	\$ 400
Base Metal Leaching Operations	\$ 6,000	\$ 3,000	\$ 400
Discharge to Surface Waters	\$ 4,500	\$ 2,200	\$ 300
Precious Metal Processing	\$ 4,800	\$ 2,400	\$ 400
In-Situ Leaching	\$ 6,000	\$ 3,000	\$ 400
Other	\$ 4,000	\$ 2,000	\$ 400
Other Permits			

1. Fees paid pursuant to A.A.C. R18-9-123 for permit applications submitted but not acted upon as of the effective date of this rule shall be deemed to satisfy the initial fee under the rules.
2. Permit includes individual aquifer protection permits, and will include NPDES permits if ADEQ receives delegation from the United States Environmental Protection Service to administer the NPDES program in ARIZONA.

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<b>Other Discharging Facilities</b>	\$ 4,000	\$ 2,000	\$ 300
<b>Reuse Permit</b>	\$ 1,400	-	\$ 100

**Schedule B**

**Initial Fees for Water Quality Protection Services Other than Permits**

<b>ADEQ SERVICE</b>	<b>INITIAL FEE</b>
Aquifer Protection Permit	
Applicability Determination Reviews	\$ 0
Clean Closure Plan Reviews	\$ 0
Construction Approvals and Time Extension Reviews for an On-Site Wastewater Disposal System	\$ 100
Construction Approvals and Time Extension Reviews for Domestic Wastewater Systems, Including Collection Systems (greater than or equal to 2,000 gpd, but less than 20,000 gpd)	\$ 500
Construction Approvals and Time Extension Reviews for Domestic Wastewater Systems, Including Collection Systems (greater than or equal to 20,000 gpd)	\$ 1000

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Schedule C

**Maximum Water Quality Protection Permit Fees**

TYPE OF DISCHARGING PERMIT	New Permit <sup>a,b,c</sup>	Major Modification <sup>d</sup>	Other Modification <sup>d</sup>
<b>Wastewater Treatment Facilities (With a design greater than or equal to 20,000 gpd)</b>			
Lined Surface Impoundments	\$ 16,000	\$ 10,600	\$ 1,500
Discharge to Surface Waters	\$ 16,000	\$ 10,600	\$ 1,500
Subsurface Discharge	\$ 16,000	\$ 15,300	\$ 2,300
<b>Wastewater Treatment Facilities (With a design less than 20,000 gpd)</b>			
	\$ 16,000	\$ 8,000	\$ 1,100
<b>Industrial Facilities</b>			
Lined Surface Impoundments	\$ 16,000	\$ 16,000	\$ 2,900
Discharge to Surface Waters	\$ 16,000	\$ 16,000	\$ 4,000
Subsurface Discharge	\$ 16,000	\$ 16,000	\$ 4,000
<b>Mine Facilities</b>			
Tailing Piles or Ponds	\$ 16,000	\$ 16,000	\$ 10,000
Base Metal Leaching Operations	\$ 16,000	\$ 16,000	\$ 10,000
Precious Metal Processing	\$ 16,000	\$ 16,000	\$ 7,200
Discharge to Surface Waters	\$ 16,000	\$ 16,000	\$ 8,200
In-Situ Leaching	\$ 16,000	\$ 16,000	\$ 8,200
<b>Other Permits</b>			
<b>Other Discharging Facilities</b>	\$ 16,000	\$ 16,000	\$ 4,300



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- b. In the case of systems with annual gross revenues of \$300,000 or less, the maximum fee charged will be capped at 1% of the gross revenue.
- c. In the case of systems with annual gross revenues of \$300,000 or less, the maximum fee charged will be capped at 1% of the gross revenue.
- d. In the case of systems with annual gross revenues of \$300,000 or less, the maximum fee charged will be capped at 1% of the gross revenue.

**R18-14-105. Fee Assessment and Collection**

- A. An owner or operator of a facility or activity at which ADEQ has conducted an annual inspection shall pay the final itemized bill within 30 days from the date on which the final inspection report and final itemized bill are mailed to the owner or operator.
- B. Except for annual inspections, ADEQ shall not review any requests for water quality protection services until the appropriate initial fee set forth in Schedule A or B of R18-14-103 is paid in full to ADEQ.
- C. After completion of its review, but prior to notification to the owner or operator of the final action on the request, ADEQ shall prepare a final itemized bill which shall contain:
  - 1. The total number of hours of the review;
  - 2. The dates and number of hours of travel done as part of the review.
  - 3. The total amount of fees due.
  - 4. A description of each activity performed.
  - 5. The number of hours spent performing each activity.
- D. If the total amount of fees due exceeds the amount of the initial fee, ADEQ shall bill the owner or operator for the cost of the services, less the initial fee, up to the maximum allowed in Schedules C and D under R18-14-104. If the total amount of fees is less than the initial fee, ADEQ shall refund the difference to the person who paid the initial fee.
- E. ADEQ shall not take final action on a request until the final bill is paid in full.
- F. ADEQ shall not review any subsequent request for water quality protection services for an owner or operator until all past due fees are paid in full.
- G. Fees for water quality protection services shall be paid either by county check, purchase order, city check, company check, certified check, or money order, made payable to ADEQ.

**R18-14-106. Reconsideration of the Bill; Appeal Process**

- A. An owner or operator may seek review of the final itemized bill by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail or by facsimile within 30 days of the date of the final itemized bill.
- B. The Director shall make a final decision on the request for reconsideration and mail a final written decision to the owner or operator within 10 working days after the date of receipt by the Director of the written request for reconsideration.
- C. A final decision of the Director on a request for reconsideration is subject to the appeal process set forth in A.R.S. § 41-1092 et seq.

**R18-14-107. Effect on County Fees**

Nothing in this Chapter affects the authority of county or other local governments to charge fees for implementing delegated ADEQ water quality protection programs in accordance with statutory authority.

**R18-14-108. Review of Fees**

- A. By no later than the end of fiscal year 1999, ADEQ shall complete a review of revenues derived from and costs incurred for water quality protection services and shall issue a written report on the review.
- B. ADEQ shall afford the public an opportunity to participate in the review, including an opportunity to examine and comment on the report before a final report is issued.
- C. If the final report demonstrates that fees charged pursuant to this Chapter are higher or lower than the reasonable costs of providing water quality protection services, ADEQ shall, within three months after completing the review, commence a rulemaking to adjust the fees accordingly.

**NOTICE OF FINAL RULEMAKING**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**PREAMBLE**

- |  |   |
|--|---|
| <p>1. <b>Sections Affected</b><br/>R19-3-326</p>   | <p><b>Rulemaking Action</b><br/>New Section</p> |
| <p>2. <b>The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):</b><br/>Authorizing statute: A.R.S. § 5-504(B)<br/>Implementing statute: A.R.S. § 5-504(B)</p> |   |

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

3. **The effective date of the rules:**  
October 25, 1996
4. **A list of all previous notices appearing in the Register addressing the final rules:**  
**Notice of Rulemaking Docket Opening:**  
2 A.A.R. 3495, August 2, 1996  
**Notice of Proposed Rulemaking:**  
2 A.A.R. 3593, August 16, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding this rule:**  
Name: Sandy Williams, Executive Director  
Address: Arizona State Lottery Commission  
4740 East University Drive  
Phoenix, Arizona 85034  
Telephone: (602) 921-4400
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
R19-3-326 sets forth provisions unique to the conduct of the Arizona Lottery's instant games. The provisions of the rule are necessary to implement the requirements of A.R.S. § 5-504(B) which have not been specified generically in R19-3-301. The unique provisions described in this rule are the nature and location of play symbols, the ticket number, the validation code, the prize denominations, and the method of selecting a winning ticket.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**  
This game will provide our players with larger variety of instant games with a potential increase in sales. The only impact this rule has upon Lottery retailers is to specify how they determine if a ticket is a winning ticket and, if so, the prize amount.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**  
The prize structure in subsection (F) was changed to read: LIFE = \$1,000 (one thousand dollars/month/life (paid annually) minimum of 20 years, maximum of 60 years).  
The following was added to the rule: subsection (G) If the winning ticket was purchased by a group of players, the group shall designate one of the players to sign the ticket. The "LIFE" prize will be funded by a single annuity policy. The number of payments shall be determined by the life of the person whose signature appears on the winning ticket. The Lottery shall make payment only to the person whose signature appears on the winning ticket, except as provided in A.R.S. § 5-513.
10. **A summary of the principal comments and the agency response to them:**  
No comments were received by the agency.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
12. **Incorporations by reference and their location in the rules:**  
None.
13. **Was this rule previously adopted as an emergency rule?**  
No.
14. **The full text of the rules follows:**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**ARTICLE 3. INSTANT LOTTERY GAMES**

Section  
R19-3-326. "Win for Life"

**ARTICLE 3. INSTANT LOTTERY GAMES**

**R19-3-326. "Win for Life"**

A. In the latex play area located on the lower half of the ticket, 2 horizontal rows of 5 play symbols appear with "YOUR NUMBERS" printed above, and are 1 of the following: "1" "2" "3" "4" "5" "6" "7" "8" "9" "10" "11" "12" "13" "14"

"15" "16" "17" "18" "19" or "20" with confirming captions. Two play symbols appear on the upper-right front of the latex area with "WINNING NUMBERS" printed above, and are 1 of the following: "1" "2" "3" "4" "5" "6" "7" "8" "9" "10" "11" "12" "13" "14" "15" "16" "17" "18" "19" or "20" with confirming captions.

B. The play symbol captions correspond with and verify the play symbols as follows:

Play Symbol	Caption
1	ONE
2	TWO
3	THR

**Arizona Administrative Register**  
**Notices of Final Rulemaking**

- 4 FOR
- 5 FIV
- 6 SIX
- 7 SVN
- 8 EGT
- 9 NIN
- 10 TEN
- 11 ELV
- 12 TLV
- 13 THN
- 14 FRN
- 15 FTN
- 16 SXT
- 17 SVT
- 18 EGN
- 19 NIT
- 20 TWY

C. Prize symbol captions correspond with and verify each of the prize symbols and are 1 of the following: "\$1", "\$2", "\$3", "\$4", "\$5", "\$10", "\$20", "\$50", "\$1,000", or "LIFE" with confirming captions. The confirming captions are as follows:

Prize Symbol	Caption
\$1	ONEDOL
\$2	TWODOL
\$3	THRDOL
\$4	FORDOL
\$5	FIVEDOL
\$10	TENDOL
\$20	TWYDOL
\$50	FTYDOL
\$1,000	ONETHOU
LIFE	\$1,000/MNTH

D. A pack-ticket number beginning with 400001 is located in the lower-left portion on the back of the ticket.

E. The retailer validation code verifies instant winners of a "\$2", "\$5", "\$10", "\$50", or "\$100" ticket. The retailer validation code which corresponds with and verifies each of these winners is as follows:

TWO	≡	\$2	FFY	≡	\$50
FIV	≡	\$5	ONH	≡	\$100

TEN = \$10

F. A prize winner in the "WIN FOR LIFE" instant game is determined by removing the latex from the play area on the front of the ticket to reveal the play symbols and prize symbols. Neither the retailer validation code (or any portion thereof), the pack-ticket number (or any portion thereof), nor the validation number (or any portion thereof) are play symbols or prize symbols and are not usable or playable as such. If any play symbol under "YOUR NUMBERS" matches either play symbol under "WINNING NUMBERS", the player wins the prize shown directly under the play symbol. There are 20 chances to win 10 times on a ticket. The prizes are as follows:

\$1 + \$1	≡	\$2 (two dollars) or
\$2	≡	\$2 (two dollars) or
\$5	≡	\$5 (five dollars) or
\$1 + \$1 + \$1 + \$2	≡	\$5 (five dollars) or
\$1 + \$2 + \$2	≡	\$5 (five dollars) or
\$1 + \$4	≡	\$5 (five dollars) or
\$10	≡	\$10 (ten dollars) or
\$1 + \$2 + \$2 + \$5	≡	\$10 (ten dollars) or
\$2 + \$3 + \$5	≡	\$10 (ten dollars) or
\$5 + \$5	≡	\$10 (ten dollars) or
\$50	≡	\$50 (fifty dollars) or
\$10 + \$10 + \$10 + \$20	≡	\$50 (fifty dollars) or
\$10 + \$20 + \$20	≡	\$50 (fifty dollars) or
\$50 + \$50	≡	\$100 (one hundred dollars) or
\$1,000	≡	\$1,000 (one thousand dollars)
		or
LIFE	≡	\$1,000 (one thousand dollars/month/life (paid annually) minimum of 20 years, maximum of 60 years)

G. If the winning ticket was purchased by a group of players, the group shall designate 1 of the players to sign the ticket. The "LIFE" prize will be funded by a single annuity policy. The number of payments shall be determined by the life of the person whose signature appears on the winning ticket. The Arizona State Lottery Commission shall make payment only to the person whose signature appears in the winning ticket, except as provided in A.R.S. § 5-513.